

DOMINICAN REPUBLIC

“ILLEGAL PEOPLE”: Haitians And Dominico-Haitians In The Dominican Republic

I. SUMMARY	3
II. RECOMMENDATIONS.....	5
To the government of the Dominican Republic	5
To the government of Haiti.....	6
To the United Nations	6
To the International Labor Organization	6
To donor and other governments	7
III. BACKGROUND.....	7
The Haitian and Dominican Populations	7
A Troubled History	8
Sugar Production, Haitian Labor, and Economic Development.....	8
Racial Prejudice and “Anti-Haitianism”	9
Flag Burning Scare.....	10
International Human Rights Standards	11
IV. DEPORTATIONS AND MASS EXPULSIONS.....	11
Deportees’ Case Histories	12
Mass Expulsions	15
Numbers of Deportees.....	17
The Rules Governing Deportations	17
Government Claims	18
Evaluation under International Law	19
V. CITIZENSHIP AND PROOF OF DOMINICAN IDENTITY	22
Citizenship by Birth.....	22
Obstacles to Registering Births	23
Individual Cases.....	25
International Legal Standards	26
VI. EDUCATION	27
Claubian Jean Jacques	27
International Standards	28
VII. THE INTERNATIONAL RESPONSE	29
Inter-American Human Rights System.....	29
United Nations	31

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¹ The previous reports are: Americas Watch (now the Americas division of Human Rights Watch), "Haitian Sugar-Cane Cutters in the Dominican Republic: A Preliminary Report," *An Americas Watch Report*, May 1989; Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, *Haitian Sugar Cane Cutters in the Dominican Republic* (New York: Human Rights Watch, 1989); Americas Watch, "Harvesting Oppression: Forced Labor in the Dominican Sugar Industry," *An Americas Watch Report*, June 1990; Americas Watch and National Coalition for Haitian Refugees, "Dominican Authorities Ban Creole Radio Program and Crack Down on Protestors," *A Human Rights Watch Report*, vol. 4, no. 3, April 1992; Americas Watch, "A Troubled Year: Haitians in the Dominican Republic," *A Human Rights Watch Report*, October 1992.

I. SUMMARY

Detained by Dominican immigration officials in February 2001, Lucía François was not allowed to collect her two youngest children, ages four and six, before being deported from the Dominican Republic to Haiti. When Human Rights Watch interviewed her six months later, she had still not seen nor spoken to them. Unable to return to the Dominican Republic, where her children were born, and with no possibility of telephone contact, François was totally cut off from her two girls. “I haven’t been able to talk to anyone from home,” François told Human Rights Watch. “I don’t know if they’re dead or alive Every day, when I wake up, I’m thinking about my kids.”

David Pere Martínez, deported from the Dominican Republic that same month, faced a similar situation. Martínez was not just separated from his family, however, he was also sent to a country that he did not know, and whose language he did not speak.

While François was born in Haiti, Martínez was born in the Dominican Republic and was therefore a Dominican citizen under the country’s constitution. Indeed, Martínez’s parents and grandparents were born in the country. But the Dominican military officials who detained Martínez had little interest in ascertaining where he was born. They looked instead to the color of his skin, which is black, and decided to deport him to Haiti.

Over the past decade, the Dominican government has deported hundreds of thousands of Haitians to Haiti, as well as an unknown number of Dominicans of Haitian descent. On several occasions, most recently in November 1999, the Dominican authorities have conducted mass expulsions of Haitians and Dominico-Haitians, rounding up thousands of people in a period of weeks or months and forcibly expelling them from the country. Snatched off the street, dragged from their homes, or picked up from their workplaces, “Haitian-looking” people are rarely given a fair opportunity to challenge their expulsion during these wholesale sweeps. The arbitrary nature of such actions, which myriad international human rights bodies have condemned, is glaringly obvious.

The country’s daily flow of deportations follows a similar pattern. Suspected Haitians are targeted for deportation based on the color of their skin, and are given little opportunity to prove their legal status or their claim to citizenship. As a rule, people facing deportation from the Dominican Republic have no chance to contact their families, to collect their belongings, or to prepare for departure in any way. They are frequently dropped off at the Haitian border within a matter of hours after their initial detention, sometimes with nothing more than the clothes on their back.

The summary procedures in use during these deportations fall far short of the due process requirements of international law, specifically those outlined in the International Covenant on Civil and Political Rights, and the American Convention on Human Rights. The race-based selection of deportees violates international prohibitions on racial discrimination.

Questioned by Human Rights Watch as to how undocumented Haitians are identified, the subdirector for Haitian affairs of the Dominican government’s migration department insisted that they can be spotted “by their way of living.” “They’re poorer than we are,” he said. “They have terrible homes.” Noting that Haitians also have “rougher skin,” the subdirector declared that “they’re much blacker than we are. They’re easy to recognize.” Further evidencing his trust in ethnic stereotypes, the subdirector explained that his department’s goal was to stem the “invasion” of young Haitian delinquents: “the ones who act like they’re in the Haitian capital, drinking and dancing.”

Dominico-Haitians – persons of Haitian descent who were born in the Dominican Republic – face serious difficulties in proving their entitlement to remain in their own country. Despite the constitution’s conferral of citizenship to persons born on Dominican soil, Dominico-Haitians are systematically refused proof of Dominican citizenship. The denial often begins in the hospital where they are born, when hospital staff refuse to provide their parents with proof of the birth. Later in their lives, the obstacles to obtaining proof of citizenship become even more difficult to surmount. The result is that many Dominicans of Haitian descent live a precarious existence, perpetually at risk of deportation. Generations of ethnic Haitians are denied recognition as citizens, leaving them in what the Inter-American Commission on Human Rights has described as “permanent illegality.” Their lack of legal status has a clear negative impact on their economic opportunities, as well as other central aspects of their lives.

This damaging situation has its defenders. Relying on a strained and opportunistic reading of one clause in the country’s constitution, many Dominican officials claim that the Dominican-born children of Haitian migrant workers have no right to citizenship. Since the constitution contains a narrow exception to citizenship by

birth – it does not cover the children of foreigners who are “in transit” at the time of the birth – they assert that all undocumented Haitians must be deemed to be “in transit.” People who have lived in the Dominican Republic for years, decades, or even generations, are thus wrongly squeezed into a category meant for brief and casual visitors.

This unjust denial of citizenship negatively affects Dominico-Haitians from an early age. Although Dominican law does not specifically bar undocumented children from attending school, many Dominico-Haitian children have been barred from the classroom, particularly beyond the primary school level. The denial of educational opportunities has an obvious deleterious effect on such children’s possibilities for future advancement.

In the past, the Dominican authorities have responded with undisguised hostility to international criticism regarding the country’s treatment of Haitians. Indeed, former Dominican president Joaquin Balaguer once reacted to such criticism by instituting mass summary deportations, complaining of an “ominous campaign” by the international community against his country. There are real signs, however, that the government’s approach is changing for the better. This is true both in the government’s rhetorical response to international attention, and in the direction it appears to be moving in substance.

The government of Hipólito Mejía, in power since 2000, has taken several important though incomplete steps toward compliance with international law. In July 2001, his secretary of education announced that schools would no longer require children to show birth certificates in order to enroll, and President Mejía stated that this was a likely first step granting such children full citizenship. In September, as the result of negotiations with the Inter-American Commission, the authorities provided Dominican birth certificates to two Dominican-born children whose citizenship had been in dispute. Most recently, in a welcome move announced in March 2002 after negotiations with the petitioners in a case involving Haitians and Dominico-Haitians currently pending in the Inter-American human rights system, the Dominican government agreed to establish a joint committee to monitor its compliance with the rulings of the Inter-American Court of Human Rights.

II. RECOMMENDATIONS

Human Rights Watch joins a number of regional and international human rights bodies in calling on the Dominican Republic to improve its treatment of Haitians and Dominicans of Haitian descent. We make the following recommendations:

To the government of the Dominican Republic

Deportations

- Dominican migration officials should ensure that suspected undocumented aliens are afforded, at a minimum, the due process safeguards guaranteed by Law 95 and Regulation 279, including the opportunity to defend against deportation.
- Low-ranking migration and military officials should not be permitted to render final, on-the-spot deportation decisions. Pursuant to Law 95 and Regulation 279, such officials' initial deportability determinations should be subject to review by a hierarchical superior. Judicial review of these decisions should also be permitted, at least in cases in which a claim of Dominican citizenship is asserted.
- Dominican migration officials should not limit the opportunity to defend against deportation to the presentation of Dominican identity documents, since Dominicans of Haitian descent are frequently unable to obtain the identity documents due them. Dominican officials should also be required to question potential deportees regarding their status. Officials should ask questions such as: "Where were you born?"; "Do you have any identity documents?"; "Did you ever have any identity documents?"; "Did you ever try to apply for identity documents?"; "When did you come to the Dominican Republic? How?"
- The Dominican government should abide by the terms of the 1999 Protocol of Understanding between the Dominican Republic and the Republic of Haiti on the Procedures for Repatriation. In particular, the Dominican government should avoid separating nuclear families; allow deportees to collect their personal belongings and retain their identity documents; provide each deportee with a copy of his or her order of deportation; and give Haitian authorities advance notice of repatriations.
- Military officials should not be permitted to conduct deportations independent of trained migration officials. Their role in deportations should be an auxiliary one, limited to providing transportation and logistical support.
- The Dominican government should ensure humane conditions of detention for all deportees, providing sufficient food, sanitary facilities, and separate accommodations for immigration detainees and convicted criminals. Conditions of detention should conform to international and regional standards, including the U.N. Standard Minimum Rules for the Treatment of Prisoners and the U.N. Body of Principles for the Protection of All Persons Under Any Form of Detention.

Citizenship and Proof of Dominican Identity

- The Dominican government should publicly recognize that, in accordance with Article 11 of the Dominican Constitution, the Dominican-born children of Haitian migrant workers are Dominican citizens.
- The Dominican government should take immediate and concrete steps to provide identity documents to each of the many thousands of Dominican individuals of Haitian descent who have been unable to obtain proof of Dominican citizenship.

- Dominican civil registry officials should not require the parents of children born in the Dominican Republic to present Dominican *cédulas* (identity cards) in order to obtain birth certificates for their children. To ensure that officials stop imposing this requirement, the Central Electoral Board should issue a directive to this effect. It should also train registry officials regarding the eligibility of children of Haitian descent who were born in the Dominican Republic to Dominican identity documents.
- The Central Electoral Board should issue a directive to all hospitals informing hospital staff that they should issue maternity papers for all children born in their facilities, regardless of whether the children's parents are documented or undocumented.
- The Central Electoral Board should eliminate the requirement that a late applicant for Dominican nationality documentation must obtain certifications from all fourteen official registries, verifying that he or she was not already registered in another district.
- The Central Electoral Board should issue a directive cautioning civil registry officials against allowing racial discrimination to taint decisions regarding the provision of identity documents.

Education

- The Dominican Republic should ensure that all children, documented and undocumented, have equal access to Dominican schools. To that end, the Dominican government should take steps to ensure that local schools comply with the secretary of education's July 2001 resolution regarding access.
- The Dominican government should launch a public awareness campaign to invite the parents of undocumented children to send them to school.

International Treaties

- The Dominican government should ratify the international treaties relating to the protection of migrants, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

To the government of Haiti

- The Haitian government should take steps to ensure that its citizens are provided Haitian identity documents, in accordance with the terms of Protocol of Understanding signed with the Dominican government in December 1999.

To the United Nations

- U.N. agencies such as the United Nations Development Program (UNDP) and the United Nations Children Fund (UNICEF) should provide technical and financial support to the Dominican government to encourage it to bring its treatment of Haitians and Dominico-Haitians into conformity with international standards. They should coordinate their activities with the local Dominican and Haitian nongovernmental organizations whose work on these issues is crucial.

To the International Labor Organization

- The International Labour Organization (ILO), specifically its International Migration Branch, should assist the Dominican government in reforming its legislation, policies and practices relating to labor migration.

To donor and other governments

- Representatives of donor and other governments should raise the issue of the Dominican Republic's treatment of Haitians and Dominico-Haitians in their bilateral meetings. They should press the Dominican government to bring its relevant legislation, policies and practices into conformity with international standards.

III. BACKGROUND

Sharing the island of Hispaniola, the Dominican Republic and Haiti have never been the happiest of neighbors. With a history marked by mutual antagonism and conflict, the two populations have long viewed each other with wary eyes. Even now, with relatively warm relations between their governments, Dominicans and Haitians have yet to overcome this legacy of hostility and mistrust.

Fearful of Haiti's enormous poverty and dysfunctional state, many Dominicans feel their country has been unfairly called upon to bear the brunt of the Haitian exodus. According to a poll published in a local magazine a few years ago, 75 percent of the Dominican public supported repatriating the Haitian population, while only 5 percent thought that Haitians were "of use" to the country.² Yet Dominican agriculture and, in recent years, the construction industry, are heavily dependent on the use of Haitian laborers. The very survival of the sugar industry, the Dominican Republic's second most important source of export earning (behind mining), relies on the many thousands of Haitian sugar cane cutters who labor for low wages in terrible conditions.

Given the 380-kilometer border that stitches the two countries together, and the continuing political and economic difficulties in Haiti, the question of Haitian migration is unlikely to recede in importance.

The Haitian and Dominican Populations

With some seven million and eight and a half million people, respectively, Haiti and the Dominican Republic are broadly comparable in population size, but Haiti has only half as much land as its neighbor.³ Linguistic, cultural, and perceived racial differences between the two populations crystallized during the colonial era, when the Dominican Republic was governed by the Spanish and Haiti by the French.⁴ Creole-speaking Haitians are descended from African slaves, while Dominicans – who also have African ancestry – speak Spanish, and many claim Spanish or other European ancestors. Even though there is no clear racial divide between the two countries, the Haitian population is generally considered "blacker" than that of the Dominican Republic.

There are no reliable figures on the number of Haitians and Dominico-Haitians currently living in the Dominican Republic, and the question is a controversial one.⁵ The Inter-American Commission, citing Dominican migration authorities, reported in 1999 that approximately 500,000 to 700,000 ethnic Haitians were living in the Dominican Republic.⁶ Other figures range even higher: "a million or so," was the Dominican Army chief's best guess.⁷ It is likely that half of these people, if not more, were born in the Dominican Republic.⁸ Of those born in Haiti, only a tiny fraction are in the Dominican Republic legally, on a visa or work permit.⁹ According to the

² Shelley Emling, "Inmigrantes haitianos impactan a la economía dominicana," *Latinolink.com*, March 30, 1997.

³ *CIA World Factbook 2001*, chapters on the Dominican Republic and Haiti.

⁴ Ernesto Sagás, *Race and Politics in the Dominican Republic* (2000), p. 22; National Coalition for Haitian Rights, *Beyond the Bateyes* (1996), p. 6.

⁵ See NCHR, *Beyond the Bateyes*, p. 14 (citing unofficial estimates ranging from 400,000 to 1 million).

⁶ Inter-American Commission on Human Rights, Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II.104 (1999), para. 350.

⁷ Human Rights Watch interview, Manuel E. Polanco Salvador, Santo Domingo, Dominican Republic, June 13, 2001.

⁸ NCHR, *Beyond the Bateyes*, p. 15

⁹ In 1999, the Dominican representative to the United Nations said that there were roughly 4,000 Haitian migrants legally in the country. Committee on the Elimination of Racial Discrimination, Summary Record of the 1365th meeting, U.N. Doc. CERD/C/SR.1365 (September 1, 1999), para. 4.

Dominican authorities, many thousands of Haitians have bought false identity papers, complicating the task of distinguishing lawful residents and citizens from undocumented migrants.¹⁰

A Troubled History

Numerous real and perceived historical grievances complicate relations between Dominicans and Haitians. Dominicans, for example, still resent Haiti's twenty-two year rule of their country, a period portrayed as harsh and oppressive.

Anti-colonial struggles took place on both sides of Hispaniola in the early nineteenth century. The Haitians ousted the French in 1804, while in 1821 the Dominicans proclaimed their independence from Spain. This period of self-rule in what is now the Dominican Republic (then known as Santo Domingo) was short-lived, however. The following year, the Haitian army invaded the eastern portion of the island, holding it until 1844. The hero of Dominican independence, Juan Pablo Duarte, led the forces that drove out the Haitian occupiers and established the Dominican Republic as an independent state. It was not until the second half of the nineteenth century that the Dominican Republic and Haiti brokered a fragile peace, agreeing to delimit the border that divides the island.¹¹

In light of this troubled history – and of distorted versions of it disseminated through the schools and through state-controlled media since the time of Trujillo – some Dominicans are still quick to perceive a Haitian threat to the territorial integrity of their country. Even with the abolition of the Haitian military, the lingering memory of the Haitian invasion still fuels anti-Haitian paranoia.¹²

Sugar Production, Haitian Labor, and Economic Development

Sugar production on an industrial scale in the Dominican Republic began to develop in the 1870s. From the 1880s on, the industry relied heavily on seasonal, migrant labor, brought first from islands of the Lesser Antilles and later from Haiti.¹³ Haitian migrant workers typically lived in *bateyes* – company towns located next to sugar plantations.

Beginning in 1952, Haiti and the Dominican Republic entered into a series of bilateral agreements to ensure the continued supply of seasonal cane cutters from Haiti to the Dominican sugar cane fields. To manage the sugar mills and the contracting of Haitian labor, the Dominican government ultimately created the State Sugar Council (*Consejo Estatal del Azúcar*, or CEA).¹⁴ It was the job of the CEA to recruit, by force if need be, the necessary cane cutters for each harvest.¹⁵ But at the same time, in a seemingly schizophrenic policy toward Haitians, the Dominican authorities also began engaging in large-scale summary deportations. These deportation operations targeted seasonal workers, expelling Haitians from the country at the end of the sugar harvest.¹⁶

Although the profitability of the Dominican sugar industry has declined in recent years, Haitian labor remains a crucial contributor to the country's prosperity, particularly in the agricultural and construction sectors. The Dominican economy, in contrast to Haiti's, has expanded considerably over the past decade.¹⁷ Sugar is still

¹⁰ See, for example, "El consúl general de la República Dominicana detecta bandas que falsifican visas en Haití," Europa Press, December 18, 2001.

¹¹ NCHR, *Beyond the Bateyes*, p. 7. The final demarcation of the border was done in the 1930s and 1940s.

¹² Moreover, although Haitians do not have a Dominican occupation to remember, a similar paranoia can be found on the Haitian side. See, for example, "L'Armée dominicaine s'apprêterait à intervenir en Haïti," *Haïti Progrès*, November 10-16, 1999 (warning of a likely Dominican invasion of Haiti).

¹³ Samuel Martínez, *Peripheral Migrants: Haitians and Dominican Republic Sugar Plantations* (Knoxville: University of Tennessee Press, 1995), pp. 38-41. It was the United States that originally began encouraging Haitian immigration, to the dismay of many Dominican nationalists. Sagás, *Race and Politics*, p. 40.

¹⁴ The CEA was created in 1966 by Law No. 70.

¹⁵ The history of forced labor in the Dominican Republic has been well documented, including in several Human Rights Watch reports. See, for example, Americas Watch (now the Americas Division of Human Rights Watch), "Harvesting Oppression: Forced Labor in the Dominican Sugar Industry," A Human Rights Watch Short Report, June 1990.

¹⁶ In other words, the combination of forced recruitment and forced deportation was not as irrational as it might appear. The Dominican authorities rounded up Haitians at the beginning of the harvest and deported them at its end. See NCHR, *Beyond the Bateyes*, p. 23.

¹⁷ In 1999-2000, for example, the Dominican Republic's gross domestic product grew 7.8 percent, compared to 1.2 percent growth in Haiti (a figure that fell short of the rate of population growth). *Economist Intelligence Unit Country Report, Dominican Republic, Haiti, Puerto Rico*, April 2001, p. 34. Yet, partially due to the slowing U.S. economy, Dominican

one of the country's primary exports, but there has also been considerable growth in tourism and in free trade zones.

Haiti remains by far the poorest country in the Western hemisphere and one of the poorest countries in the world. According to current estimates, Haiti's 1999 per capita GNP is less than one-quarter that of the Dominican Republic, and unemployment stands at roughly 65 percent.¹⁸ Given Haiti's abysmal economic conditions and political turmoil, it is no surprise that many Haitians now willingly flock to the Dominican Republic in hopes of a better life.

Racial Prejudice and "Anti-Haitianism"

Racial prejudice in the Dominican Republic runs deep. With independence, Dominican nationalists began constructing a separate Dominican identity, one that was defined in large part in solidarity against the perceived Haitian threat. Labeling themselves "Hispanic" and Haitians "black," a distinction motivated rooted in racial prejudice that ignores their country's racial diversity, Dominicans nationalists tried to emphasize their racial and cultural distance from Haiti.¹⁹

In line with such views, Dominican nationalists quickly launched efforts to "improve" the Dominican bloodline by encouraging European immigration.²⁰ Early immigration legislation was facially discriminatory, with stringent controls to limit the entry of non-Caucasian immigrants.²¹

General Rafael Trujillo, the Dominican dictator who assumed power in the wake of the U.S. occupation, flaunted his racism, making it clear that he considered Haitians to be inferior. In 1937, in a brutal abuse of power, he ordered the army to massacre all Haitians found outside sugar plantations. Casualty estimates vary, but even the most conservative accounts acknowledge that thousands of Haitians were slaughtered.²²

Through the mid-twentieth century, Trujillo fed the Dominican population a steady diet of anti-Haitian propaganda, relying on the schools and the media to disseminate these ideas. Proclaiming himself the defender of the country's identity, he planted the seeds for stereotypes about Haitians that persist today in everyday Dominican discourse. Trujillo's crony, Joaquín Balaguer, who would ultimately inherit the presidency, launched similarly racist attacks, describing the Haitian as a "generator of sloth" who "is indolent by nature and applies no special efforts to anything useful unless it is forced to obtain its subsistence by that means."²³

Even now, expressions of anti-Haitian sentiment are common at all levels of society. The influx of Haitian migrants, a popular target of resentment, is frequently characterized as a threat to national sovereignty. Inflammatory statements by government officials, such as former President Balaguer's now infamous call to Dominicans to stand in "sacred union" against a "peaceful invasion" of Haitian migrant workers, are a routine staple of the country's political culture. Those who sympathize with the plight of Haitians are often labeled anti-Dominican.

Besides discriminating against Haitian citizens, many Dominicans assume that all black people are Haitian, or have Haitian blood, which is regarded with equal resentment. It is also frequently believed that all workers on sugar cane plantations and all residents of *bateyes* are Haitian, although the labor pool in the sugar industry and the population in the *bateyes* is ethnically diverse, including second- and third-generation Dominico-Haitians and even Dominicans without Haitian ancestors.

Despite the country's glaring legacy of racism, the Dominican government has stubbornly refused to acknowledge the problem. In reports to intergovernmental human rights bodies, for example, rather than pledging

economic growth shrank sharply in the first half of 2001, with an estimated 3 percent growth for the entire year. Economic growth in Haiti was estimated to be 1 percent in 2001. Office of the United States Trade Representative, Fourth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act, December 31, 2001

¹⁸ Ibid. (estimating Dominicans' per capita income at \$2,100, and Haitians' at \$510).

¹⁹ Sagás, *Race and Politics*, p. 36.

²⁰ Ibid, p. 38.

²¹ Americas Watch, National Coalition for Haitian Refugees, and Caribbean Rights, *Haitian Sugar Cane Cutters in the Dominican Republic* (New York: Human Rights Watch, 1989), p. 6 (citing Law 5002 of July 18, 1911, which stated that "[a]gricultural companies are forbidden from importing for their labor needs immigrants who do not belong to the white race").

²² See, for example, NCHR, *Beyond the Bateyes*, p. 8 (citing estimates ranging from 5,000 to 37,000 killed).

²³ Joaquín Balaguer, *La Realidad Dominicana: Semblanza de un País y de un Régimen* (Buenos Aires: Imprenta Ferrari Hermanos, 1947), p. 104.

to combat racism, the government denies that racial discrimination against Haitians exists. In a typical report, the government told the U.N. Committee on the Elimination of Racial Discrimination in 1999: “it is worth emphasizing that there is no racial prejudice [in the Dominican Republic] . . . [and] there is absolutely no foundation for the belief that there is discrimination against Haitians living in the country.”²⁴

Flag Burning Scare

If any reminder were needed, the April 2001 scandal over the alleged burning of a Dominican flag stands as stark proof of the existence of enormous resentment and prejudice against Haitians.

On April 13, 2001, the Dominican government collectively deported 137 Haitians and Dominicans of Haitian descent who were falsely accused of burning a Dominican flag.²⁵ In La Romana, on the eastern side of the country, groups of Haitians and Dominico-Haitians were observing Holy Week, the week before Easter, by celebrating the Gaga, a traditional Lenten festival.²⁶ (The festivals are organized each year by the local communities and are officially sanctioned by the Dominican government. Many Dominicans take part in them.) As has been the tradition in past years, each group hung a Dominican flag at the festival.²⁷

At some point during the festival, Julio Perelló, a journalist, reported to General Luis Dario de la Cruz Consuegra, a military official in La Romana, that the celebrants were burning a Dominican flag.²⁸ Known as a nationalist, Perelló is reputed to be especially upset by the Dominico-Haitian community’s use of Dominican symbols in its Holy Week activities.²⁹ He has also repeatedly criticized the Dominican government for allowing the Dominico-Haitian community to dance the Gaga. Just three days before the festival, he appeared on a radio program in which he condemned Haitian cultural events, particularly ones in which Dominican symbols have been incorporated, as “immoral” and “damaging to the interests of the Dominican nation.” He also called upon the people of La Romana to publicly object to the Dominican government’s tacit approval of these events.³⁰

Dominican officials then contacted Rómulo de los Santos, the deputy director of Haitian affairs of the Direction General of Migration.³¹ De los Santos promptly sent a contingent of Dominican migration agents to La Romana.³² With the help of local police officers, migration officials stormed into three of the celebrations, hit anyone who was dancing, and ordered everyone onto waiting police vehicles.³³ The migration authorities immediately deported 137 people who were not able to present documents.³⁴ They transported the remaining 106 to the Preventiva de Romana prison, where the people were detained on charges of having burned a flag.³⁵

Dominican politicians quickly moved to capitalize on the incident by portraying it as a shocking reminder of the Haitian “threat.” For example, Pelegrín Castillo Seman, a nationalist member of congress, warned in an article in *El Siglo* that the alleged flag-burning was a sign that “every day there are more [Haitians] and they are more organized.”³⁶ For several weeks, coverage of the alleged flag-burning dominated the local news.

Yet when the La Romana prosecutor, Dr. Elpidio Peguero, investigated the incident, he found no proof that the group burned a flag. In fact, the flag that was allegedly burned had apparently been treated with care.³⁷

²⁴ Committee on the Elimination of Racial Discrimination, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Addendum, Dominican Republic, U.N. Doc. CERD/C/331/Add.1 (February 11, 1999), para. 6. Expressing concern over those comments, the CERD pointed out that “no country can claim the total absence of racial discrimination in its territory.” Committee on the Elimination of Racial Discrimination, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Concluding Observations, Dominican Republic, U.N. Doc. CERD/C/304/Add.74 (April 12, 2001).

²⁵ Movimiento de Mujeres Dominico-Haitianas (MUDHA), Resultado de la Investigación Realizada en Bateyes de Las Romana Respecto de la Supuesta Incineración de la Bandera Dominicana, por Inmigrantes Haitianos (undated).

²⁶ *Ibid.*, p. 7.

²⁷ *Ibid.*, p. 7.

²⁸ *Ibid.*, p. 6.

²⁹ *Ibid.*, p. 5.

³⁰ *Ibid.*

³¹ Human Rights Watch interview, Romulo de los Santos, Santo Domingo, June 4, 2001.

³² MUDHA, Resultado de la Investigación.

³³ *Ibid.*, pp. 2, 7.

³⁴ *Ibid.*, p. 6.

³⁵ *Ibid.*, p. 2; Human Rights Watch interview, Romulo de los Santos, Santo Domingo, June 4, 2001.

³⁶ “Por qué quemaron la bandera?,” *El Siglo*, April 22, 2001.

³⁷ MUDHA, Resultado de la Investigación.

The local police officers who were monitoring the festival testified that the group never burned a flag.³⁸ The local mayor, one of the festival organizers, agreed.³⁹ The prosecutor concluded that the allegation was nothing more than a nationalist effort to denigrate the Haitian community, and he ordered the immediate release of all of the detainees.⁴⁰

International Human Rights Standards

The Dominican Republic has ratified all of the major international and regional treaties relating to the protection of human rights.⁴¹ It has accepted the competence of the U.N. Human Rights Committee, the body charged with monitoring the implementation of the ICCPR, allowing it to hear individual complaints of violations. Beginning in 1999, the Dominican government has also recognized the competence of the Inter-American Court of Human Rights, the authoritative interpreter of the American Convention. It is not a party, however, to any of the treaties specifically pertaining to the protection of migrant workers.⁴²

IV. DEPORTATIONS AND MASS EXPULSIONS

Over the past decade, the Dominican Republic has deported hundreds of thousands of Haitians to Haiti, as well as an unknown number of Dominicans of Haitian descent.⁴³ On several occasions, most recently in November 1999, the Dominican authorities have conducted mass expulsions of Haitians and Dominico-Haitians, rounding up thousands of people in a period of weeks or months and forcibly expelling them from the country. Snatched off the street, dragged from their homes, or picked up from their workplaces, “Haitian-looking” people are rarely given a reasonable opportunity to challenge their expulsion during these wholesale sweeps. The arbitrary nature of such actions, which myriad international human rights bodies have condemned, is glaringly obvious.

But although they differ in scale and, to some extent, in their mechanics, the deportations that take place in the Dominican Republic on a daily basis are in many ways similar to these reoccurring waves of mass expulsions. Suspected undocumented Haitians are singled out for deportation based on the color of their skin. Once in migration or military custody, they are frequently granted little or no opportunity to prove their legal status. Low-level army or migration officials make the decision to deport them, and that decision is final.

In a typical case, a Haitian immigrant or Dominican of Haitian descent is stopped on the street by a Dominican immigration or army official. The official may ask him or her for documentation or, in occasional instances, demand a bribe. Some deportees report that if they produce documentation, it is confiscated or destroyed. The person believed to be in the Dominican Republic illegally may be detained briefly in an army garrison or other holding facility, but is often transported directly to the border by bus. In a few instances, deportees report having been physically abused by Dominican officials prior to deportation.

As a rule, deportees are given no opportunity to contact their families, retrieve their belongings, collect their paychecks, or in any way prepare for departure. Dropped off at the border and told to walk to the other side, they typically arrive in Haiti with little or no money, indeed, often with nothing more than the clothes on their back. They may have to beg for food and for a place to sleep.

These abusive deportation practices do not only affect the lives of deportees themselves. Family members of deportees, who may have no idea what happened to the deportees except that they did not return home at night, obviously suffer as well. Children separated from their parents are likely to be particularly traumatized.

³⁸ *Ibid.*, p. 3.

³⁹ *Ibid.*, p. 5.

⁴⁰ *Ibid.*

⁴¹ Among the treaties the Dominican Republic has ratified is the International Covenant on Civil and Political Rights (ICCPR); the American Convention on Human Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Racial Discrimination; and the International Covenant on Economic, Social and Cultural Rights.

⁴² There are three such treaties: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was adopted by the U.N. General Assembly in 1990, and will enter into force when it has been ratified by twenty states (the number of ratifications was sixteen as of September 2001); the Migration for Employment Convention (ILO No. 97), and the Migrant Workers (Supplementary Provisions) Convention (ILO No. 143).

⁴³ See discussion below of the annual numbers of deportees.

Moreover, if to a lesser extent, all those at risk of deportation are affected, even if they are never actually deported. The threat of deportation causes Haitians and Dominicans of Haitian descent to restrict their travel, avoiding cities and remaining within the bateyes, which migration officials rarely enter. Indeed, many believe that the country's deportation policies – by discouraging Haitian laborers from venturing outside of the bateyes – help to ensure a continued supply of cheap labor for the sugar industry.⁴⁴

Deportees' Case Histories

Human Rights Watch interviewed a number of Haitians and Dominico-Haitians who had been deported, most of them within the past year. All of our interviewees were picked up in relatively small-scale deportation operations, having been transported to the border and expelled together with fifty to 100 other deportees.

Nearly all of the people we interviewed were outside of the bateyes when they were picked up by the authorities, and the large majority of them were picked up in the cities, including several in Santo Domingo. Although immigration sweeps are occasionally conducted in the bateyes,⁴⁵ it is clear that Haitians and Dominico-Haitians run a much higher risk of detention and deportation when they enter urban areas. Indeed, Human Rights Watch visited a number of bateyes whose inhabitants told us that the migration authorities never entered there.⁴⁶ And when questioned on the topic, the subdirector of the migration department freely admitted that his officials did not look for people in the bateyes.⁴⁷

All of Human Rights Watch's interviewees were black, and they believed that they were stopped because of the color of their skin. "In [the officials'] view, blacks are Haitian," claimed one Dominico-Haitian. "It doesn't matter if you were born here,"⁴⁸

The following are some representative case histories.

David Pere Martínez

Born in the Dominican Republic, David Pere Martínez grew up in Batey 7, a small community in the sugar cane region near Barahona, in the southwest of the country. Before February 2001, when he was deported, he had never been to Haiti.⁴⁹

Martínez, age twenty-one, was walking along Máximo Gómez Street in Santo Domingo to work at a construction site when a group of military officials stopped him. Even though Martínez is Dominican – his Haitian roots go back three generations to his great-grandparents – the guards insisted that he was "from Haiti." When he tried to explain that he was born in the Dominican Republic, the officers hit him twice and forced him onto a bus. About twenty other dark-skinned people were already on the bus. The bus transported the group directly to the border at Jimaní, where Dominican officials ordered them to cross into Haiti on foot.

Martínez arrived in Haiti disoriented, alone, and scared. He had never visited the country before and was unable to speak or understand Creole. He had not eaten since he was arrested, but he did not have any money so he was forced to beg for food from vendors. He ended up meeting a family of Spanish-speaking vendors from the mountains who offered to let him live with them if he would work on their farm.

Meanwhile, Martínez's cousin, who had witnessed Martínez's arrest, sent word to his family that he had been deported. Fearing for his young son's safety, Martínez's father went to search for him in Haiti. After two months of tireless searching, his father found him in the market in Malpasse, Haiti. Martínez's father, who was

⁴⁴ Human Rights Watch interview, Padre Pedro Ruquoy, Centro Puente, Batey 5, Dominican Republic, June 5, 2001. Padre Ruquoy has worked in Dominican batey communities for nearly thirty years.

⁴⁵ In January 2001, for example, police, army and migration officials conducted a joint raid on Batey Bella Vista, in Sosua, Puerto Plata. Between forty to sixty families were evicted in the raid, and the majority of those evicted were deported to Haiti. According to a detailed report on the incident compiled by MUDHA, the government team arrived in the middle of the night, dragging people from their beds and terrifying their children. The victims, many of whom were born in the Dominican Republic, lost all their belongings, and many were separated from members of their family. MUDHA, "Memoria correspondiente a la investigación realizada en Batey Bella Vista, Sosua, Puerto Plata, los días 20 al 23 de enero 2001," February 2, 2001.

⁴⁶ For example, Human Rights Watch interview, Batey Mata Mamón, June 2, 2001; Human Rights Watch interview, Padre Pedro Ruquoy, June 5, 2001.

⁴⁷ Human Rights Watch interview, Rómulo de los Santos, Santo Domingo, June 4, 2001.

⁴⁸ Human Rights Watch interview, Aniseto Bria, Batey Mata Mamón, June 2, 2001.

⁴⁹ Human Rights Watch interview, David Pere Martínez, Batey 7, Dominican Republic, June 5, 2001.

also born in the Dominican Republic, had a valid Dominican identification card, and together with his son he managed to reenter the Dominican Republic and return home.

Since the deportation, Martínez has felt trapped in Batey 7, where the only employer is the Barahona sugar mill. He would like to return to Santo Domingo, where he would be able to find higher-paying work under better conditions, but is afraid that he will be deported again if he returns. Even though he has obtained a special certificate from the local police that attests to his Dominican citizenship and provides his identification card number, he feels at real risk of summary deportation.⁵⁰

Johnny La Guerre

Johnny La Guerre has not been able to see or contact his wife and three young children in almost a year – ever since he was deported. La Guerre was born in Jacmel, Haiti, but moved to the Dominican Republic in 1963, when he was twenty years old.⁵¹ He came to the Dominican Republic legally during a period when the Haitian government contracted with the Dominican Republic to supply cane workers, although his work authorization has long since expired. Placed with the La Romana sugar mill, he lived in a house near the sugar fields for almost forty years. Although La Guerre’s first language is Creole, after so many years in the Dominican Republic his Creole is peppered with Spanish words.

One day in October 2000, when La Guerre was on his way home from work, an immigration official stopped him and barked, “You, I am going to send to Haiti.” According to La Guerre, the official never even asked to see any identification. Instead, he put La Guerre on a bus that already held several dozen people. Dominican officials continued to pick up other people from the street for some time. The guards hit those who resisted arrest. Once the bus was full, the guards took them to a army garrison in Monte Plata, an inland town. They spent one night in the garrison and at 8 a.m. the next day they were taken to Jimaní, the Dominican border town, by bus. At the border, “the guards opened the gate and said ‘go.’” Interviewed the following year in Fonds Parisien, a town just on the Haitian side of the border, La Guerre described his first days in Haiti: “I didn’t know a soul here. I had to beg for food and sleep on the floor of a local restaurant.” Ultimately, a member of a local nongovernmental association helped him find a place to stay. He has been able to support himself by tending animals just outside of town.

Since the deportation he has not been able to contact his wife, Andrenie Joseph, or his three children – Manuel, André, and Jean – the youngest of whom is only four years old. His family’s home has no telephone, nor does it even have a real address; it is simply a shack adjoining a sugar cane field in Batey Cuja, La Romana.

Anxious to inform his wife of his whereabouts, La Guerre told Human Rights Watch: “I can’t continue without her.” He wants to return to the Dominican Republic to get his family and his belongings, but he can not re-cross the border without documents.

Jorge Rene Méndez

By age twenty-three, Jorge Rene Méndez, a third-generation Dominican of Haitian descent, had been deported from the Dominican Republic to Haiti twice.⁵² The first time he was deported, on March 1, 1999, Dominican migration agents grabbed Méndez off Máximo Gómez Street in Santo Domingo and forced him onto a bus holding about fifty other detainees. Méndez said that they never asked to see his documents or questioned him about his legal status. The bus cruised the streets of Santo Domingo, picking up more undocumented Haitians and Dominicans of Haitian descent throughout the city until it was full. The guards then took them to a jail in San Cristobal, where they joined hundreds of other detainees who were being held there awaiting deportation.

Jorge spent several nights in jail. Each day, the guards would herd about one hundred people onto a large bus and transport them to the border. When Méndez was finally transported to the border at Jimaní, in the southeastern Dominican Republic, he was ordered off the bus and forced to cross the border on foot. He arrived in Haiti, for the first time in his life, alone, lost, and penniless. For eight days, he begged for food and shelter until a *buscón* (a cross-border smuggler of people) offered to take him back to the Barahona sugar mill, where his family

⁵⁰ Leoncio Moto, Segundo Lieutenant, Oficial Comandante del Distrito, Policía Nacional, Acta de Sertificación [sic], May 24, 2001 (certifying that David Pere Mendez is Dominican).

⁵¹ Human Rights Watch interview, Johnny La Guerre, Fonds Parisien, Haiti, June 11, 2001.

⁵² Human Rights Watch interview, Jorge Rene Méndez, Batey 7, Dominican Republic, June 5, 2001.

still works. At the border, the Dominican guards waved the *buscón* through the border crossing without checking the documents of any of his companions.

Less than a year later, on February 25, 2000, Dominican immigration officials stopped Jorge again while he was walking to work on Calle Duarte in Santo Domingo. When they demanded his identification papers, he showed them a photocopy of his *cédula* (official identification document). The guards ripped it up and put him onto a bus, already crowded with some eighty other suspected illegals. Without stopping, the bus transported them directly to the border at Jimaní.

For five days, Méndez begged for food and shelter in the nearest Haitian border community. On the fifth night, after the official border crossing had closed, Méndez reentered the Dominican Republic on foot. He then walked more than eighty kilometers to return to his family home in Batey 7. During the day, he subsisted on wild mangoes; at night, he slept in roadside drainage ditches.

Although Méndez was born in the Dominican Republic and has a Dominican *cédula*, he will not return to Santo Domingo because he is afraid that he will be deported again.⁵³ Méndez was able to earn a respectable salary working in construction in the capital, but there is no demand for construction workers in Batey 7, where he now lives with his family. In Batey 7, the main employer is the Barahona sugar mill, where Méndez's parents and grandparents worked all of their lives. Sugar mills pay much less than construction companies, barely enough to live on. Trapped in Batey 7 by the threat of deportation, however, Méndez may not have another option.

Lucía François

"Every day when I wake up, I'm thinking about my kids."

Dominican immigration officials were deaf to Lucía François's pleas to let her collect her two young children before she was deported. As a result, when Human Rights Watch interviewed her, she had not seen her six- and four-year-old daughters in six months.⁵⁴

François was born in Haiti in 1969 and came to the Dominican Republic in 1993. Between 1993 and 1999, she had five children, all of whom were born in the maternity ward of the Altagracia Hospital in Santo Domingo.

In February 2001, she was walking to the bus station on a street in Santo Domingo with her three eldest children, her sister, and two of her sister's children, when uniformed Dominican officials stopped her and requested to see her documents. When she told them that they did not have any documents, the officials ordered the group to board a bus that was parked nearby and took them to a police station on the other side of the capital.

François, her sister, and their children spent the night in the police station with about fifty to 100 other detainees. They slept on mattresses on the floor in an open-air courtyard. They were given water, but no food. They saw guards hit other detainees.

The next morning, they were taken to the border at Dajabón in a bus with a group of other detainees. Although François was originally from Haiti, she grew up in Jacmel, hundreds of kilometers from Ouanaminthe, the town on the Haitian side of the border where she was left. Since she didn't know anyone in the area, she walked through the streets begging for a place to stay. Ultimately, a woman took pity on François and her family and offered to let them stay in her house in Ferié, a neighboring village. That night, François, her sister, and their children, the youngest of whom was only two years old, made the four hour walk to Ferié. François recalled that her children were "very tired."

François and three of her children are still living in Ferié, relying on the generosity of the woman they met in Ouanaminthe. François has not been able to see or contact her other two children, Diela, age six, and Yanne, age four, since being deported. Nor has she been able to contact her husband. François told Human Rights Watch, "I feel like I'm going crazy. I haven't been able to talk to anyone from home. I don't know if they're alive or dead. I want to see my children. . . . Every day when I wake up, I'm thinking about my kids."

François's sister, Delicina François, was also forced to leave behind five young children and has been unable to contact her husband of eleven years since being deported.⁵⁵

⁵³ Human Rights Watch representatives saw the *cédula* during our interview.

⁵⁴ Human Rights Watch interview, Lucía François, Oumaninthe, Haiti, June 9, 2001.

⁵⁵ Elencio, nine years old; Ouelio, five years old; Ramón, three years old, Maribel, three years old, Santo, three years old.

Marlene Mésidor

“You came to the Dominican Republic with nothing and that is how you will leave.”

Marlene Mésidor, her husband, and their children were taken from their home at dawn, crowded onto a bus, and dropped off that same day three hundred kilometers away in Haiti.⁵⁶ Early in the morning of December 1, 2000, immigration officials banged on the door of Mésidor’s home in Villa Faro. They yelled, “Immigration!” When she told them that she did not have papers, they ordered her, “Get out!” When her husband tried to put on his shoes, the immigration officials threatened to hit him so he got on the bus barefoot, in his pajamas. When Mésidor asked the officials what would become of her belongings, they told her, “You came to the Dominican Republic with nothing and that is how you will leave.”

Mésidor, her husband, and her four children, all under the age of ten, were crowded onto a bus that already held about sixty other people. They traveled all day on the bus, without food, until they reached the border crossing at Jimaní, where they crossed on foot.

Once in Haiti, they begged a ride to the house of Mésidor’s mother-in-law in the town of Fonds Parisien, where they still lived when Human Rights Watch visited. Marlene described the deportation, “It was the worst day of my life. I was so worried about my children.”

Fayette Baltazar

Although he was born in Fonds Parisien, Haiti, Fayette Baltazar spent nearly his entire working life in the Dominican Republic.⁵⁷ He entered the country legally in 1958 as a sugar cane cutter, laboring in the fields near San Pedro de Macoris and living in Batey Cecilia. Still working as a cane cutter into his late sixties, he cut his finger one day in December 1999 and had to seek medical attention in a hospital. On his way back from the hospital, far from his home, he was picked up by three members of the military: a sergeant and two soldiers. Without even asking to see his papers, they took him to an army garrison, held him there for an hour, and put him on a bus to Haiti that same day. “I arrived without a penny in my pocket,” he told Human Rights Watch.

Now, at age sixty-nine, Baltazar lives with his brother in Fonds Parisien, near the border of the Dominican Republic. To survive, he tends animals.

Barahona Market

Padre Pedro Ruquoy told Human Rights Watch about a February 2001 immigration sweep of the Barahona market in which approximately eighty suspected Haitians were detained every day for eight days.⁵⁸ According to Padre Ruquoy, Dominican migration officials picked people up from the market and detained them in San Cristobal prison for several hours. When Padre Ruquoy visited the prison, he counted approximately 150 detainees who had been placed in the general prison population and denied food. Detainees who could not present valid Dominican identification documents were loaded onto a bus each day and transported to the border. None of the deportees were permitted to collect their belongings or contact their families prior to deportation.

Mass Expulsions

Mass expulsions of Haitians and Dominico-Haitians, in which many thousands of people are expelled in a matter of weeks or months, are another notable feature of the Dominican Republic’s deportation policy. These operations are military-led, as only the military has the resources necessary to carry out such large-scale campaigns. In general, the decision to launch such campaigns appears to be a highly political one, meant to send a political message not just to respond to immediate migration concerns.

The last decade has seen at least three waves of mass expulsions – in 1991, 1997, and 1999 – and, in 1996, a somewhat smaller wave of expulsions. During each of these episodes, bands of soldiers rounded up thousands of “Haitian-looking” people in the communities around sugar cane plantations, loaded them onto buses and trucks, and transported them en masse to the Haitian border. While even under normal deportation procedures

⁵⁶ Human Rights Watch interview, Marlene Mesidor, Fonds Parisien, Haiti, June 11, 2001.

⁵⁷ Human Rights Watch interview, Fayette Baltazar, Fonds Parisien, Haiti, June 11, 2001.

⁵⁸ Human Rights Watch interview, Padre Pedro Ruquoy, Centro Puente, Batey 5, Dominican Republic, June 5, 2001; see also GARR Press Bulletin, “Crackdown by the Dominican Army on Haitians and Dominicans of Haitian Descent,” February 21, 2001 (describing the “violent and brutal” immigration round-up of some 150 people at Barahona market on February 15).

deportees are given insufficient opportunity to contest their deportation, during mass deportations the arresting officials make little or no effort to ascertain deportees' legal status. The sole, overriding priority on such occasions is to clear the country of large numbers of Haitians.

The infamous 1991 wave of mass expulsions was triggered by international pressure on the Dominican government to improve its treatment of Haitian cane cutters, and in particular to stop the practice of forced labor.⁵⁹ In June, not long after a U.S. television network broadcast a special report documenting the Dominican Republic's abusive labor practices, and immediately after the U.S. Congress held hearings on the question, then-President Joaquín Balaguer issued a decree ordering the deportation of various categories of undocumented Haitians.⁶⁰ Acknowledging that international pressure provoked the decree, Balaguer warned that an "ominous campaign . . . has been unleashed against the [Dominican Republic] from outside."⁶¹

A few days later, the army began rounding up and expelling thousands of suspected Haitians, whether or not they fell into the categories covered by the decree. Between June 18 and the end of September, some 35,000 suspected Haitians were deported or had fled the country fearing deportation.⁶² The massive deportation effort ended not long after the September 1991 coup that overthrew Haitian President Jean-Bertrand Aristide.

Presidential elections held in May 1996 sparked a smaller burst of deportations, as politicians manipulated anti-Haitian sentiment to sway voters.⁶³ Making repeated references to the Haitian ancestry of black Dominican candidate José Francisco Peña Gómez, competing candidates claimed that over 100,000 Haitian nationals were illegally inscribed on the voter rolls. In the weeks preceding the election, nearly 5,000 suspected Haitians were deported.

In early 1997, the Dominican Republic again launched a sweeping campaign to expel undocumented Haitians. Mass deportations began in January, apparently in response to an angry public debate that had erupted over government plans to recruit additional Haitian cane cutters.⁶⁴ In two months, an estimated 25,000 suspected Haitians were expelled from the country.⁶⁵

The most recent massive deportation campaign took place in November 1999, again in an apparent backlash against international pressure. The large-scale sweeps began just after the Inter-American Commission on Human Rights issued a critical report on human rights conditions in the Dominican Republic that included a chapter on the mistreatment of Haitian migrant workers.⁶⁶ Although estimates vary, it is thought that 10,000 to 20,000 people were expelled to Haiti during November.⁶⁷

On November 22, 1999, in response to an emergency petition filed by several human rights groups, the Inter-American Commission issued precautionary measures against the Dominican Republic. The Commission's

⁵⁹ See generally Americas Watch (now the Americas Division of Human Rights Watch) and the National Coalition for Haitian Refugees, "A Troubled Year: Haitians in the Dominican Republic," A Human Rights Watch Short Report, October 1992.

⁶⁰ Decree 233-91 of June 13, 1991 (ordering the repatriation of foreigners under age sixteen and over age sixty who work or live on sugarcane plantations). This decree remained formally in effect until 1996, when President Leonel Fernández issued decree 560-96, repealing it. Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Addendum, Dominican Republic," U.N. Doc. No. CCPR/C/DOM/99/3 (September 29, 1999), p. 12.

⁶¹ *Ibid.*, p. 6.

⁶² Inter-American Commission on Human Rights, Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II.104 (1999) (hereinafter IACHR, 1999 Dominican Republic report), para. 332. On June 26, the Inter-American Commission issued precautionary measures against the Dominican authorities, demanding that the country suspend the implementation of Decree 233. The following month, the Commission conducted an on-site visit to the country. Inter-American Commission on Human Rights, Informe Anual 1991, Chapter V (1991).

⁶³ See International Women's Rights Action Watch, "Country Report: The Dominican Republic," September 1996, p. 5.

⁶⁴ See National Coalition for Haitian Rights, "Dominican Republic Launches Massive Deportation of Haitian Residents," February 12, 1997; NCHR, "Dominican Republic Continues Haitian Deportations," February 20, 1997; NCHR, "Fernández: We Deported Haitians after Breaking up Network of Beggars," *Haiti Insight Online*, Vol. 7, No. 3 (March 1997) (quoting the Dominican president as saying that "tension" was generated by a misunderstanding over the contracting of sugar cane cutters).

⁶⁵ IACHR, 1999 Dominican Republic report, para. 325.

⁶⁶ See *ibid.*, chapter IX (Situation of Haitian Migrant Workers and their Families in the Dominican Republic).

⁶⁷ See Juan O. Tamayo, "A Dominican crackdown on illegal immigration keeps desperate Haitians out, expels thousands already in," *Miami Herald*, January 6, 2000; NCHR, "Haitian Rights Group Argues for Regional Approach in Response to New Round of Dominican Expulsions of Haitian Immigrants," *Haiti Insight Online*, November 1999.

order called upon the Dominican authorities to cease the mass expulsion of foreigners, and to respect due process norms in conducting future deportations.⁶⁸

Even aside from mass expulsions, smaller-scale deportation sweeps also respond to political factors, at least on occasion. The most prominent recent example was the collective expulsion in April 2001 of Haitians who were falsely accused of burning a Dominican flag. The incident, described above, resulted in the deportation of 137 people.⁶⁹ Elena de la Rosa, one of the deportees, was forced to leave behind her five children, the youngest of whom was only six months old and still breast-feeding.⁷⁰

Numbers of Deportees

Besides the waves of collective expulsions, more routine deportations are conducted on a daily basis. It is difficult, however, to reliably establish an average or ordinary deportation rate, as estimates vary widely, and the rate itself varies greatly over time. The most that can be said with certainty is that well over ten thousand deportations take place each year, with the true figure perhaps reaching thirty thousand.⁷¹

According to the Direction General of Migration, Dominican migration officials deported 6,331 Haitians in the first four months of 2001.⁷² Official statistics indicate that the government returned 14,639 Haitians in 2000, 17,524 in 1999, and 13,733 in 1998.⁷³ Monthly levels reportedly ranged from zero to 4,734.⁷⁴ The subdirector of Haitian affairs indicated that migration officials only deport an average of eighty to ninety Haitians per week, while the head of the army said that, in conjunction with the Migration Department, his force departs an average of 2,000 Haitians a month.⁷⁵ But, he cautioned, "it varies a lot each month." The Human Rights Clinic of Columbia University Law School, citing a number of official and non-official sources, similarly estimated that deportations are carried out at the rate of approximately 2,000 per month.⁷⁶

The Rules Governing Deportations

Law 95 and Regulation 279

Dominican Law 95 and Regulation 279 set out the rules governing domestic deportation procedures.⁷⁷ In principle, they extend considerable due process protections to potential deportees. These paper protections, however, are largely ignored in practice.

Under Law 95 and Regulation 279, Dominican immigration officials can initiate an investigation into an individual's immigration status if they have reason to believe that the person is deportable.⁷⁸ If the investigating official determines that the suspect is deportable, the official must request an arrest warrant from the Director General of Migration. The request must state the facts of the case and the specific grounds for deportation. If the suspect does not admit to the charges of deportability, the immigration official must present proof of his or her deportability and the suspect must have an opportunity to rebut that proof. The proof presented by the

⁶⁸ Letter from Hernando Valencia-Villa, Adjunct Executive Secretary of the Inter-American Commission on Human Rights, to Eduardo Latorre, Secretary of State for Foreign Relations, Dominican Republic, November 22, 1999. For further discussion of this litigation, see the section on the International Response, below.

⁶⁹ MUDHA, "Resultado de la Investigación Realizada en Bateyes de La Romana Respecto de la Supuesta Incineración de la Bandera Dominicana, por Inmigrantes Haitianos" (undated), p. 6.

⁷⁰ *Ibid.*, p. 5.

⁷¹ See generally Columbia Human Rights Clinic, "The Situation of Haitians and Dominicans of Haitian Descent in the Dominican Republic," March 20, 2001, p. 32 (estimating 24,000 to 30,000 deportations per year).

⁷² Human Rights Watch interview, Sonia Vidal, Director of the Statistics Division, Direction General of Migration, Santo Domingo, June 4, 2001. The Subdirector of Haitian Affairs provided much lower figures, however. He claimed that migration officials only deported 7,250 people from September 2000 through May 2001. Human Rights Watch interview, Rómulo de los Santos, Santo Domingo, June 4, 2001.

⁷³ Dominican Republic, Dirección General de Migración, *Anuario de Migraciones 1998-2000* (July 28, 2000), p. 30; Human Rights Watch interview, Sonia Vidal, Santo Domingo, June 4, 2001.

⁷⁴ *Ibid.*

⁷⁵ Human Rights Watch interview, Rómulo de los Santos, Santo Domingo, June 4, 2001; Human Rights Watch interview, Manuel E. Polanco Salvador, Santo Domingo, June 13, 2001.

⁷⁶ Columbia Human Rights Clinic, "The Situation of Haitians," p. 32.

⁷⁷ Ley de Migración No. 95, del 14 de abril de 1939; Reglamento de Migración No. 279, del 12 de mayo de 1939.

⁷⁸ See Reglamento de Migración No. 279, Sección XIII (Deportación).

immigration official and the suspect must be sent to the secretary of state of the Interior and Police, who will render a final decision.

Law 95, like Regulation 279, dates back to the Trujillo era. Unsurprisingly, the Dominican legislature has been debating its revision for some time.⁷⁹ In 2000, the legislature drafted a migration reform bill, but voted against its adoption. A new migration bill was introduced in the Senate in July 2001.

Bilateral Agreement

A protocol of understanding signed by Haiti and the Dominican Republic in December 1999 further regulates the treatment of deportees.⁸⁰ In that document, the Dominican Republic agreed to improve its deportation procedures in several ways. Specifically, the Dominican government promised: a) not to deport Haitians at night or during the afternoon on Sundays or holidays; b) to avoid separating nuclear families (parents and young children); c) to deport Haitians only through the Jimaní, Dajabón, Elías Piña, and Pedernales border crossings, rather than the country's less accessible crossings; d) to allow deportees to collect their personal belongings and retain their identity documents; e) to provide each deportee with a copy of his or her order of deportation and; f) to give the Haitian authorities notice of repatriations.⁸¹

Government Claims

High-ranking migration officials insisted to Human Rights Watch that deportations are conducted with strict adherence to the requirements of the law. To begin with, explained Rómulo de los Santos, the Migration Department's subdirector for Haitian affairs, migration agents always have probable cause to suspect that an individual is an undocumented Haitian prior to making a stop. "We receive lots of information," he said.⁸²

He continued:

People call in and complain: "Haitians are around here; they're not working, hanging out, bothering people, selling drugs." When that happens, we send a team out.

When asked how migration officials recognize Haitians, the subdirector first said that they are recognizable "by their way of living." "They're poorer than we are," he explained. "They have terrible homes." Also, he added, Haitians are recognizable by "their way of walking."

Haitians also have "rougher skin," de los Santos stated, "and they're much blacker than we are. They're easy to recognize."

Both the head of the Migration Department, Miguel Vásquez, and his subdirector, de los Santos, insisted that the goal of the department was not to deport all Haitians but only those who cause trouble. "We're trying to crack down on the mafias," said Vásquez. "There are Haitian women who rent their children to beg in the streets."⁸³ Rather than deporting workers, Vásquez claimed, the department goes after those who are "unemployed and in the street begging" or "gambling and drinking rum in the street."⁸⁴ De los Santos echoed such comments, saying that it was the department's job to stem the "invasion" of young Haitian delinquents: "the ones who act like they're in the Haitian capital, drinking and dancing."⁸⁵

These officials told Human Rights Watch that potential deportees are always given the opportunity to defend against deportation by showing Dominican documentation. In the event that a suspect lacks

⁷⁹ See, for example, NCHR, *Beyond the Bateyes*, p. 29 (discussing draft immigration law that was originally prepared in 1991).

⁸⁰ Protocol of Understanding Between the Dominican Republic and the Republic of Haiti on the Procedures for Repatriation, December 2, 1999, in Santo Domingo, Dominican Republic.

⁸¹ The Haitian government, in return, fully acknowledged the Dominican government's right to repatriate Haitians who had entered the Dominican Republic illegally. It also agreed to establish permanent delegations in Jimaní, Dajabón, Elías Piña, and Pedernales to receive deportees, to redouble its efforts to prevent illegal border crossings, and to ensure that its nationals were provided Haitian identity documents. Numerous sources told Human Rights Watch that the Haitian government had done very little to uphold its responsibilities under the agreement.

⁸² Human Rights Watch interview, Rómulo de los Santos, Santo Domingo, June 4, 2001.

⁸³ Human Rights Watch interview, Miguel Vásquez, Director General de Migración, Santo Domingo, June 4, 2001.

⁸⁴ Ibid.

⁸⁵ Human Rights Watch interview, Rómulo de los Santos, Santo Domingo, June 4, 2001.

documentation, migration officials are said to question the suspect to ensure deportability. If the migration inspector is satisfied that the suspect is deportable, he can detain the individual for a brief period, typically no longer than forty-eight hours. During that period, the migration inspector submits a request for deportation to the subdirector of Haitian affairs, who in turn asks the director general to sign off on the order of deportation. If the suspect is deemed deportable, he or she is said to have the opportunity to contact family and to collect his or her belongings before being transported to the border by bus.⁸⁶ Yet none of the deportees Human Rights Watch interviewed concurred with this account.

Migration officials claimed that the military never carries out independent deportation operations. The head of the army, however, openly admitted that the army deports Haitians without the Migration Department's involvement.⁸⁷ Although he described the army as an auxiliary to the Migration Department in this area, he said the army frequently handles deportations when no migration officials are available. His admissions were consistent with the accounts of deportees.

The subdirector of Haitian affairs also stated that Dominican officials abide by the 1999 bilateral agreement by, among other things, always notifying the Haitian Consulate prior to conducting a deportation.⁸⁸ Human Rights Watch interviewed the Haitian consul in Barahona, however, who told us that the notification requirement was never complied with. He explained:

They're supposed to inform us so that we can make sure the deportee's rights are respected: we can make sure he gets paid, if he's owed money, and we can make sure his family knows about him. But we never hear a thing from them. We have to get our information from the press. The Dominican authorities used to occasionally send a list of deportees via fax, but not very often, and now we haven't received anything for about a year.⁸⁹

Finally, migration officials stated that deportees are normally not detained, but instead are sent to the border within two to three hours of being picked up. In rare cases, they said, deportees may be held at a small detention center in Santo Domingo called the Vacacional de Jaina. Deportees, in contrast, frequently described being held in military garrisons, jails, and police stations. When asked about the practice, the head of the army freely admitted that military facilities were used to hold Haitian deportees. "We hold them until we collect enough to fill up a bus," he explained. "We have stations all over the country. There's plenty of room for them."⁹⁰

Both the migration authorities and the head of the army claimed that detained Haitians were provided sufficient food. All of the deportees Human Rights Watch interviewed, however, said that they had nothing to eat while in detention.

The Director General of Migration said that, in his view, international groups exaggerate the negative impact of deportation. He suggested that deportation is not a particularly traumatic experience for most Haitians because they are accustomed to moving back and forth across the border. "The Haitian comes and goes," he explained, usually staying no longer than one or two months in the Dominican Republic.⁹¹ The subdirector for Haitian affairs claimed that Haitians routinely tell migration officials, "Send me now. I'll be back tomorrow." But their accounts differed considerably from the views of the deportees that Human Rights Watch interviewed, some of whom clearly felt that their lives were left in tatters.

Evaluation under International Law

The summary deportation procedures typically employed in the Dominican Republic fall far short of the requirements of Law 95 and Regulation 279. They also violate international standards, including those set out in human rights treaties binding on the Dominican Republic.

⁸⁶ Human Rights Watch interviews, Miguel Vásquez and Rómulo de los Santos, Santo Domingo, June 4, 2001.

⁸⁷ Human Rights Watch interview, Manuel E. Polanco Salvador, Jefe de Estado Mayor del Ejército, Santo Domingo, June 13, 2001; Human Rights Watch interview, Bernaldo Fulcar, Army Legal Advisor, Santo Domingo, June 14, 2001. Past reports have similarly documented the army's independent role with regard to deportations. See, for example, NCHR, *Beyond the Bateyes*, p. 27 (stating that the army conducts round-ups of Haitians on its own initiative).

⁸⁸ Human Rights Watch interview, Rómulo de los Santos, Santo Domingo, June 4, 2001.

⁸⁹ Human Rights Watch interview, Edwin Paraison, Haitian Consul in Barahona, Santo Domingo, June 2, 2001.

⁹⁰ Human Rights Watch interview, Manuel E. Polanco Salvador, Santo Domingo, June 13, 2001.

⁹¹ Human Rights Watch interviews, Miguel Vásquez and Rómulo de los Santos, Santo Domingo, June 4, 2001.

International Covenant on Civil and Political Rights

Although suspects held for deportation are not guaranteed the full panoply of due process rights afforded criminal defendants, international human rights standards applicable to deportation proceedings do nonetheless impose basic due process requirements. Article 13 of the International Covenant on Civil and Political Rights (ICCPR), in particular, includes a package of requirements applicable to deportation proceedings. Furthermore, Articles 2 and 26 of the ICCPR prohibit Dominican authorities from carrying out deportations in a discriminatory manner.⁹²

Article 13 provides:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.⁹³

Article 13 applies to “all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise,” including repatriation and deportation proceedings.⁹⁴ Although the precise contours of each of the due process rights protected by Article 13 are not entirely settled, the provision clearly prohibits “collective or mass expulsions,” and requires more than summary proceedings.⁹⁵

Where there is any doubt whether a suspect in a deportation proceeding is “lawfully in the territory,” the person’s legal status must be determined according to procedures that comply with the requirements of Article 13.⁹⁶ As a result, Article 13’s due process protections apply whenever the suspect’s status is in dispute. If a credible claim of Dominican citizenship is made, moreover, the appropriate level of procedural protection rises even further, since no country is permitted to deport its own citizens.⁹⁷

Arrest or detention prior to deportation trigger the protections of Article 9 and 10 of the ICCPR.⁹⁸ Article 9 protects against arbitrary arrest and detention by guaranteeing the right to be informed on the charges promptly, to challenge unlawful detention before a court, and to compensation in the event of illegal detention.⁹⁹ Article 10 mandates humane conditions of detention, including separate accommodations for suspects and convicts, children and adults.

American Convention on Human Rights

The American Convention on Human Rights bars states from deporting their own citizens, prohibits the collective expulsion of aliens, and specifies that aliens who have entered a country lawfully may only be expelled pursuant to a decision reached “in accordance with law.”¹⁰⁰ It also include a general provision, Article 8(1), which sets out the due process protections covering determinations of a person’s rights.

Article 8(1) provides:

⁹² U.N. Human Rights Committee, General Comment 15: The Position of Aliens under the Covenant, U.N. Doc. HRI/GEN/1/Rev.1, p. 18 (1994) (hereinafter U.N. Human Rights Committee, General Comment 15), paras. 9-10.

⁹³ The Committee has not yet issued a General Comment to delineate the precise scope and requirements of Article 13. The provision is nearly identical to Article 1 of Protocol 7 to the European Convention of Human Rights, however, so that European jurisprudence can be another source of interpretative guidance.

⁹⁴ U.N. Human Rights Committee, General Comment 15, para. 9.

⁹⁵ U.N. Human Rights Committee, General Comment 15, para. 10.

⁹⁶ U.N. Human Rights Committee, General Comment 15, para. 9; U.N. Human Rights Committee, *Observaciones del Comité de Derechos Humanos: Dominican Republic*, U.N. Doc. CCPR/CO/71/DOM (2001), para. 16.

⁹⁷ See ICCPR, art. 12.

⁹⁸ See U.N. Human Rights Committee, General Comment 15, para. 9; U.N. Human Rights Committee, General Comment 8: Right to Liberty and Security of Persons (Article 9), para. 1; U.N. Human Rights Committee, General Comment 21, Article 10, para. 2.

⁹⁹ See also U.N. Human Rights Committee, General Comment 8, para. 4.

¹⁰⁰ American Convention on Human Rights, arts. 22(5), 22 (6), and 22(9).

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

In the Riebe Star Case, which involved Mexico's summary expulsion of foreign priests, the Inter-American Commission on Human Rights held that the protections set out in Article 8(1) apply to deportation proceedings.¹⁰¹ Using a balancing test that weighs the seriousness of the deprivation at issue, the Commission also concluded that some, but not all, of the due process safeguards afforded criminal defendants under Article 8(2) of the Convention should also be guaranteed in deportation proceedings.¹⁰² From the array of Article 8(2) protections, the Commission singled out "the right to be assisted . . . ; to practice their right to defense, with enough time to ascertain the charges against them and hence to refute them; to have a reasonable time in which to prepare and formalize their statements; and to seek and adduce the corresponding evidence."¹⁰³

In oral argument before the Inter-American Court of Human Rights, in August 2000, the Commission further elaborated on its views regarding the requirements of due process in deportation proceedings.¹⁰⁴ The Commission specified that potential deportees should be granted the following rights: legal assistance, written notice of the charges, investigation prior to detention, a reasoned decision, the right to appeal, an opportunity to resolve family and labor problems prior to deportation, and judicial authority for a discretionary grant of a suspension of deportation for humanitarian or equitable reasons. The Court has yet to rule on the Commission's interpretation of the Convention's requirements, however.

Besides its due process requirements, the American Convention also includes, in Article 24, a general prohibition on discrimination. Finally, Articles 5 and 7 guarantee the rights to humane treatment and personal liberty, respectively.

Specific Failures of Dominican Practice

The deportation proceedings typically employed in the Dominican Republic, because of their summary nature, violate the procedural requirements of both the ICCPR and the American Convention. Because the proceedings do not comply with the requirements of Dominican law, deportation decisions are not "reached in accordance with law." Deportees currently have little opportunity to contest their deportation; nor are their cases reviewed in any sort of individualized manner; nor do they have the opportunity to be represented before the decision-maker.

The forced separation of families also inflicts severe hardship, particularly on children who are cut off from their parents.

Moreover, in instances when deportees are arrested and detained prior to deportation, the Dominican government also violates its treaty obligations by detaining deportees in inhumane conditions.¹⁰⁵ Deportees are often denied food, sometimes for days. They may be forced to sleep on the floor or exposed to the elements in

¹⁰¹ *Loren Laroye Riebe Star, Jorge Alberto Barón Guttlein and Rodolfo Izal Elorz v. Mexico*, No. 11.610 (Inter-Am. Comm. H.R. April 13, 1999) (hereinafter Riebe Star Case). The Commission's ruling in the Riebe Star Case appears to conflict with a more recent decision of the European Court of Human Rights. In *Maaouia v. France*, the Court found that Article 6 of the European Convention, which parallels the American Convention's Article 8, does *not* apply to deportation proceedings. In contrast to the Inter-American Commission, the European Court held specifically that a deportation proceeding does not constitute a "determination of . . . civil rights and obligations." *Maaouia v. France*, No. 39652/98 (Eur. Ct. H.R. Oct. 5, 2000), para. 35.

¹⁰² In making this determination, the Commission did not rely directly on Article 8(2), but instead looked to national laws and the pronouncements of scholars to give specific content to the general idea of due process.

¹⁰³ Riebe Star Case, para. 71.

¹⁰⁴ The Commission was acting as advocate for the petitioner in case 12.271, involving deportations from the Dominican Republic.

¹⁰⁵ In addition to the relevant provisions of the ICCPR and the American Convention on Human Rights, these conditions should be assessed according to the U.N. Standard Minimum Rules for the Treatment of Prisoners and the U.N. Body of Principles for the Protection of All Persons Under Any Form of Detention.

open-air courtyards. Men, women, and children are frequently quartered with each other or together with common criminals.

V. CITIZENSHIP AND PROOF OF DOMINICAN IDENTITY

Under the Dominican Constitution, all persons born on the country's territory are Dominican citizens. Nonetheless, ethnic Haitians born in the Dominican Republic are systematically denied citizenship. The denial often begins in the hospital itself, on an infant's very first day, when medical staff refuse to provide undocumented Haitian parents with proof of their child's birth. Later in a child's life, the obstacles to obtaining proof of citizenship become progressively more onerous.

The result of such discriminatory policies is that many Dominico-Haitians who were born in the Dominican Republic and have lived there all their lives remain perpetually at risk of summary deportation. Not only is their own legal status precarious, but they transmit this status to their children. Generations of ethnic Haitians living in the Dominican Republic are denied recognition as Dominican citizens, leaving them in what the Inter-American Commission on Human Rights has termed a situation of "permanent illegality."¹⁰⁶

In recent months, however, the Dominican Republic has shown an unprecedented openness toward recognizing the citizenship of the children of undocumented Haitian immigrants. In July 2001, just after the Dominican minister of education announced that public schools would be open to undocumented Haitian children, President Mejía stated that this was a likely first step granting such children full citizenship. In September, as the result of negotiations with the Inter-American Commission, the authorities provided Dominican birth certificates to two Dominican-born children whose citizenship had been in dispute.¹⁰⁷ Although it is still unclear to what extent this case heralds a general reform in the country's citizenship policy, it is undoubtedly a positive sign.

Citizenship by Birth

"An illegal person cannot produce a legal person."

– Manuel E. Polanco, head of the Dominican Army.¹⁰⁸

Article 11 of the Dominican Constitution recognizes "all persons born in the territory of the Dominican Republic" as Dominican citizens. Yet, relying on a strained and opportunistic interpretation of an exception to this rule, Dominican officials have claimed that the Dominican-born children of Haitian migrant workers have no right to Dominican citizenship.

The Dominican Constitution's grant of citizenship to persons born in the country's territory has a narrow exception: it does not extend to the legitimate children of foreign diplomats or of foreigners who were "in transit" in the Dominican Republic at the time of the birth.¹⁰⁹ On first reading, the provision seems unlikely to give rise to any great interpretative debates. Any reasonable definition of persons who are "in transit" in the Dominican Republic would cover people who are briefly in the country while on their way to another country. The plain

¹⁰⁶ Inter-American Commission on Human Rights, *Country Report on the Dominican Republic* (1999), para. 363.

¹⁰⁷ The two children were denied birth certificates in 1997. They were not recognized as Dominican citizens because both of their fathers are Haitian (their mothers are Dominican). A coalition of NGOs challenged the government's actions in a case brought before the Inter-American Commission. The case is discussed at length in the chapter on "The International Response," below.

¹⁰⁸ Human Rights Watch interview, Manuel E. Polanco Salvador, Santo Domingo, Dominican Republic, June 13, 2001.

¹⁰⁹ See Constitution of the Dominican Republic, art. 11(1) (recognizing the citizenship of "[a]ll persons born in Dominican territory, with the exception of the legitimate children of foreign diplomats or those in transit in it"). A number of constitutions, including the constitution of the United States, grant citizenship on the basis of birth on the territory (by the principle known as *jus soli*), but include an exception for the children of foreign diplomats. See U.S. Constitution, Amendment XIV (granting citizenship to persons born in the United States "and subject to the jurisdiction thereof"). An exception for transiting foreigners is less common, although it exists in the Chilean Constitution. Constitución Política de la República de Chile de 1980, con reformas de 1997, art. 10 (1). The Dominican Republic's exception for foreigners "in transit" was originally added to the country's 1908 Constitution, together with an exception for the children of foreign diplomats, and was retained in most subsequent constitutions. See generally Juan Jorge García, *Derecho Constitucional Dominicano* (Santo Domingo: Editora Corripio, 2000), pp. 129-56.

meaning of the term is further reinforced by the country's migration regulations, which state that "in transit privileges" will be conceded to "those foreigners who try to enter the Republic with the principal intention of proceeding through the country to an exterior destination."¹¹⁰ The regulation further specifies that a "period of ten days will normally be considered sufficient to allow passage through the Republic."

Yet, in a breathtaking misreading of the constitution's language, the Dominican authorities have repeatedly claimed that all undocumented Haitians are, by definition, considered to be "in transit."¹¹¹ People who have lived in the country for years, even decades, are thus squeezed into a category designed for brief and casual visitors. Some authorities even claim that all Haitian migrant workers, whether in the country legally or illegally, are "in transit" for the purposes of citizenship rules. Among those subscribing to the latter view is the president of the Central Electoral Board, the agency responsible for issuing Dominican identity documents.¹¹²

Crucially, because all Haitians are considered "in transit," their Dominican-born children are not entitled to Dominican citizenship.

Human Rights Watch noted certain differences among Dominican authorities regarding the proper scope and interpretation of the constitution's "in transit" exception. On the one hand, the director of migration flatly acknowledged that children born in the Dominican Republic, even if born to undocumented parents, have the right to Dominican citizenship. At the other extreme, as noted above, was the head of the electoral board, who would bar all ethnic Haitian children from citizenship. The head of the army placed great emphasis on the "illegality" of the Haitian population, reasoning that because Haitians were not in the country legally they had to be deemed transitory. The legal advisor to the electoral board, taking a more moderate position, suggested that Haitians resident in the Dominican Republic for longer than three months could no longer be considered "in transit."¹¹³

Obstacles to Registering Births

Ethnic Haitian children who are born in the Dominican Republic are routinely denied Dominican birth certificates, the principal form of proof of citizenship used for minors.¹¹⁴ At hospitals, undocumented parents are typically unable to obtain "maternity papers" (*papeles de maternidad*) that attest to the date and location of their children's birth.¹¹⁵ Some hospitals have facilities for registering births and issuing birth certificates, but these services too are frequently denied undocumented Haitians.

If the parents have not registered their child's birth at the hospital, they have to visit a civil registry (*Oficialía*) to obtain a birth certificate. These registries generally require applicants to show maternity papers as proof of birth in the country. Although registries also accept documents known as "acts of notoriety" that attest to a child's birth in lieu of maternity papers, such documents are extremely difficult to obtain.¹¹⁶

¹¹⁰ Reglamento de Migración No. 279, sec. V (Transeuntes); Carmen Amelia Cedeño-Caroit, "El estatuto jurídico de los haitianos y sus descendientes nacidos en República Dominicana," 1991, pp. 68-80.

¹¹¹ See, for example, Inter-American Commission on Human Rights, Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II.104 (1999), para. 352.

¹¹² Human Rights Watch interview, Manuel Morel Cerda, president, Central Electoral Board, Santo Domingo, Dominican Republic, June 13, 2001. In discussion before the Committee on the Elimination of Racial Discrimination in 1999, the representative of the Dominican Republic asserted a similar view, concluding that children in the Dominican Republic born to Haitian workers were not Dominican citizens. Committee on the Elimination of Racial Discrimination, "Consideration of Reports, Comments and Information Submitted by States Parties under Article 9 of the Convention," U.N. Doc. CERD/C/SR.1365 (September 1, 1999), para. 17.

¹¹³ Interview with Rafaelina Peralta Arias, Legal Advisor, Junta Central Electoral, in Santo Domingo, Dominican Republic, June 13, 2001.

¹¹⁴ Human Rights Watch interview, MUDHA staff, Santo Domingo, June 7, 2001; Human Rights Watch interview, Wilian Chapatiel, MOSCTHA, Santo Domingo, June 5, 2001; Human Rights Watch interview, Padre Regino Martínez, Dajabón, Dominican Republic, June 8, 2001; Human Rights Watch interview, Padre Pedro Ruquoy, Batey 5, Dominican Republic, June 5, 2001. At age sixteen, by showing a birth certificate, a Dominican may obtain a minor's *cédula*, and at age eighteen he or she may obtain an adult *cédula*.

¹¹⁵ A maternity paper does not in itself prove Dominican nationality. Instead, it serves as a record of the date and location of the child's birth. According to the Convention on the Rights of the Child, the Dominican Republic is required to register every child born in its territory immediately after birth. Convention on the Rights of the Child, art. 7.

¹¹⁶ Human Rights Watch interview, Miriam Jacquenera de Jesús, legal advisor, Jesuit Refugee Service, Santo Domingo, June 4, 2001. Such documents must be notarized, which is prohibitively expensive for many Haitian families, and must include the sworn testimony of seven witnesses and the parents of the applicant.

Besides maternity papers, both parents must also generally prove their own Dominican citizenship at the civil registry by showing their Dominican *cédulas*. The practice of civil registry officials is, however, somewhat inconsistent with regard to this requirement. In some instances, civil registries accept Haitian identity documents, such as Haitian passports, although the acceptance of Haitian identity documents may be further limited to those Haitians who can show proof of legal residence in the country.¹¹⁷ In most cases, however, officials require both parents to present Dominican *cédulas*.¹¹⁸

An additional obstacle to obtaining proof of citizenship is posed by racially discriminatory profiling. Civil registry officials sometimes presume that a child's parents are Haitian because they are black, even if they have *cédulas* proving Dominican citizenship.

If the parents try to register their child's birth more than ninety days after the date of birth, an additional step is added to the registration process. After the civil registry reviews the application for the birth certificate, the registry must forward the applicant's file to a civil judge. A birth certificate will only be issued upon the judge's approval, which usually takes a couple of months to obtain. According to a lawyer familiar with such proceedings, civil registries generally refuse to forward applications filed by undocumented Haitian parents, telling the parents that it is pointless to send the application because the court will reject it.¹¹⁹

Added to these requirements are other, substantially more onerous administrative requirements in cases of late birth registration: children registered after the age of thirteen. To begin with, the family must obtain a certificate from each of the Dominican Republic's fourteen civil registries, verifying that the applicant is not already registered there.¹²⁰ The costs alone, as well as the substantial practical difficulties involved in obtaining these certifications, bar most families from complying with these requirements.¹²¹

Whether they attempt to register their child in a timely fashion, or they employ the late registration procedures, ethnic Haitians face daunting obstacles to obtaining proof of their children's Dominican citizenship. Even with the help of a lawyer to navigate the complex requirements for registration, they may be unable to obtain the necessary documents. The Movimiento de Mujeres Dominico-Haitianas (MUDHA), an NGO based in Santo Domingo, estimates that since 1994 at least three-quarters of their applications for Dominican identity documents on behalf of persons of Haitian descent have been rejected. Moreover, they told Human Rights Watch, rejection rates have been steadily increasing in recent years.¹²²

Given the difficulty of obtaining Dominican identity papers, it is not surprising that many Dominicans of Haitian descent remain undocumented. While there are no official estimates of the numbers of Dominico-Haitians who lack proof of citizenship, anecdotal accounts suggest that their proportions are high. According to Padre Pedro Ruquoy, for example, of the roughly 20,000 people who live in the eighteen bateyes that service the Barahona sugar mill, 80 percent are Dominicans of Haitian descent, 10 percent are Dominicans of other origins, and 10 percent are Haitian.¹²³ Yet only about 50 percent of the overall batey population has proof of Dominican

¹¹⁷ The Legal Advisor to the Central Electoral Council told Human Rights Watch that the children of Haitian nationals who are legally resident in the Dominican Republic are entitled to Dominican birth certificates. Human Rights Watch interview, Rafaelina Peralta Arias, Legal Advisor, Junta Central Electoral, Santo Domingo, June 13, 2001.

¹¹⁸ Human Rights Watch interview, Miriam Jacquenera de Jesus, legal advisor, Jesuit Refugee Service, Santo Domingo, June 4, 2001. Law 659, which sets out the rules covering the registration process, requires that the birth certificate include the number of the registering parent's identification card, although it does not specify that the identification card must be Dominican. Ley No. 659 sobre Actos del Estado Civil, art. 46. The president of the electoral board insisted, however, that the law requires parents to present Dominican documentation. Human Rights Watch interview, Manuel Morel Cerda, president, Central Electoral Board, Santo Domingo, June 13, 2001. In fact, the law's requirement that the birth certificate include a record of the nationality of both the mother and father suggests that it contemplates the registration of children born to non-citizens.

¹¹⁹ Human Rights Watch interview, Miriam Jacquenera de Jesus, Santo Domingo, June 4, 2001.

¹²⁰ Ibid.

¹²¹ In an interview, the president of the Central Electoral Board, the agency that controls the issuance of Dominican nationality documentation, acknowledged that the late registration process can be extraordinarily burdensome and costly. He pointed out, among other things, that most late applicants must retain a lawyer because of the complexity of the application process. Human Rights Watch interview, Manuel Morel Cerda, president, Central Electoral Board, Santo Domingo, June 13, 2001.

¹²² Human Rights Watch interview, MUDHA staff, June 7, 2001.

¹²³ Human Rights Watch interview, Padre Pedro Ruquoy, Batey 5, Dominican Republic, June 5, 2001.

citizenship. In other words, another 40 percent of batey residents have the right to Dominican citizenship papers, but remain undocumented.¹²⁴

Discouraged by what appears to be an impossible process, some ethnic Haitians resort to buying false identification papers, or to obtaining identification papers under false pretences (they may, for example, pay a Dominican woman to register their children for them).¹²⁵ Unquestionably, many of the people who use such illegal methods have no valid claim to Dominican citizenship for themselves or their children, but others do, in fact, have legitimate claims; they are just unable to successfully assert their claims using legitimate means.

Individual Cases

The following are some representative case histories:

- Both Aniseto Bria and his wife Beatriz José were born in the Dominican Republic. They have spent their whole lives in the bateyes outside of Santo Domingo, and they speak fluent, unaccented Spanish, but neither has any identity documents. Their five children -- Francisco (age ten), Tilson (age 8), Eduardo (age seven), Fausto (age four), and Diego (age nine months) – were all born in the hospital near Batey Mata Mamón. All of them were given maternity papers at the hospital, but they have all been denied birth certificates. “They also say that because the mother has no papers, we can’t get papers for the children,” said Bria.
- Bernarda Jojo was born in Haiti, but came to the Dominican Republic “when [she] was so little that [she] can’t remember.” In 1996, she gave birth to her first daughter, Rosanna, in a state sugar council (CEA) hospital in San Luis, near Santo Domingo. Just after Rosanna was born, the hospital staff told Jojo that she could not register Rosanna for a birth certificate unless she had Dominican identity documents herself. Since Bernarda did not have Dominican identification, she was barred from registering Rosanna for a birth certificate. Rosanna, who is now five years old, was born in the Dominican Republic, speaks Spanish, and has never been to Haiti. Nonetheless, she does not have a birth certificate to prove her Dominican nationality.¹²⁶
- Victoria Baluisa is a second generation Dominican of Haitian descent. When she was born, Dominican officials refused to give her parents a Dominican birth certificate for her. Her three children, Ronnie (age three), José Enrique (age two), and Vladimir (age six months), all of whom were all born in the Hospital Los Minas in Santo Domingo, have received similar treatment. After each birth, medical staff at the hospital told Victoria that she could register her baby for a birth certificate if she could present her own Dominican *cédula*. Without any Dominican identification, Baluisa was unable to obtain birth certificates for her infants. Baluisa’s children, third generation Dominicans of Haitian descent, remain undocumented.¹²⁷
- Jacquelin Baluisa, Victoria’s sister, was also born in the Dominican Republic, but she too lacks documentation. In 1996, when she gave birth to her daughter Victoria at the Hospital Los Minas in Santo Domingo, and again in 2000, when she gave birth to her daughter Catherine, she was denied a birth certificate. On both occasions, hospital staff made it clear to her that she could only register her baby if she had Dominican documentation herself.¹²⁸

¹²⁴ See also NCHR, *Beyond the Bateyes*, p. 18 (citing a small-scale study of Santo Domingo-area bateyes that found that 46 percent of Dominico-Haitian residents had no official documentation).

¹²⁵ The woman may take the child to the civil registry and register it in her name, claiming that she does not know who the child’s father is. Sometimes such “godparents” do such services for free, as friends of the family, but more often they are paid for their services.

¹²⁶ Human Rights Watch interview, Bernarda Jojo, Batey Mata Los Indios, Dominican Republic, June 3, 2001.

¹²⁷ Human Rights Watch interview, Victoria Baluisa, Batey Mata Los Indios, Dominican Republic, June 3, 2001.

¹²⁸ Human Rights Watch interview, Jacquelin Baluisa, Batey Mata Los Indios, Dominican Republic, June 3, 2001.

- When a baby is born at home, rather than in a hospital, the first step in applying for a birth certificate is to ask the local mayor to certify the birth. Pedro San Milis and Andrea Charlie's first daughter, Joranda, was born in their home in Mata los Indios, a batey near Santo Domingo. In 1992, San Milis went to the mayor's office in Monte Plata to ask the mayor to certify Joranda's birth. The mayor told Pedro that he could not certify Joranda's birth because San Milis did not have a Dominican *cédula*.¹²⁹
- Jesús de la Cruz Pena and his wife, Cecilia Martínez, are second generation Dominicans of Haitian descent. They were both born in Batey 7, in the southwest Dominican Republic, and were ultimately able to obtain Dominican *cédulas* proving their citizenship status.¹³⁰ Nonetheless, their three children, Nelson (age fourteen), Papilin (age thirteen), and Cimena (age one) are all undocumented. On January 18, 2001, Jesús tried to obtain Dominican birth certificates for his children at the official registry in San Cristobal. De la Cruz told Human Rights Watch that the director of the official registry said that he could not issue the birth certificates because "the Junta Central prohibits registering Haitians." Even though both parents were born in the Dominican Republic and have Dominican *cédulas*, they were still refused birth certificates for their children when the registry official labeled them "Haitian" because of their dark skin.
- C.P. was born in the Dominican Republic but is undocumented. Together with G.G., she has two children: Martina, age nine, and Frank, age five. At the hospital where her children were born, C.P. was able to obtain maternity papers. Because C.P. lacks a Dominican *cédula*, however, her children were denied birth certificates by the civil registry, even though G.G., the children's father, is Dominican and has proof of Dominican identity. Not wanting their children to go through life facing deportation and other problems, the parents paid a Dominican woman to register their children as her own.¹³¹

International Legal Standards

The right to a nationality is guaranteed under several international human rights treaties, including the American Convention on Human Rights.¹³² The relevant treaties do not, however, require the country of a person's birth to grant him or her citizenship, except, perhaps, when the person would otherwise be stateless.¹³³ The descendants of Haitian immigrants in the Dominican Republic are not facing statelessness because they are entitled to Haitian nationality under Article 11 of the Haitian Constitution, which provides citizenship by descent from Haitian parents.

Yet, even though the Dominican Republic is not obligated under international law to extend Dominican citizenship to all persons born on its territory, having made the constitutional decision to do so, it may not arbitrarily deny citizenship to ethnic Haitians in violation of its own law.¹³⁴ Nor may it discriminate in the decision to confer or withhold citizenship based on skin color or race.¹³⁵

By keeping Dominico-Haitians in a condition of "permanent illegality" – lacking identity documents and vulnerable to summary deportation – the Dominican Republic seriously infringes upon their rights as citizens.

¹²⁹ Human Rights Watch interview, Pedro San Milis, Batey Mata Los Indios, Dominican Republic, June 3, 2001.

¹³⁰ Human Rights Watch representatives viewed these documents.

¹³¹ Human Rights Watch interview, C.P., Batey Mata Mamón, Dominican Republic, June 2, 2001.

¹³² American Convention on Human Rights, art. 20(1); see also ICCPR, art. 24(3).

¹³³ See American Convention, art. 20(2); U.N. Human Rights Committee, General Comment 17, para. 8 ("the right of every child to acquire a nationality. . . does not necessarily make it an obligation for States to give their nationality to every child born in the territory."); Convention on the Reduction of Statelessness, art. 1(1)(the Dominican Republic has signed but not yet ratified this treaty).

¹³⁴ Notably, the Inter-American Commission has found that the Dominican Republic is wrongly denying children of Haitian descent the right to citizenship, since "[i]t is not possible to consider persons who have resided for several years in a country in which they have developed innumerable contacts of all types to be in transit." Inter-American Commission on Human Rights, Report on the Situation of Human Rights in the Dominican Republic, OEA/Ser.L/V/II.104 (1999), para. 363; see also U.N. Committee on Economic, Social and Cultural Rights, "Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant," U.N. Doc. E/C.12/1/Add.16 (December 12, 1997), para. 34 (recommending that the Dominican citizenship of Dominican-born children of Haitian residents be recognized "without delay").

¹³⁵ ICCPR, art. 26; Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(iii).

VI. EDUCATION

Lacking proof of Dominican citizenship, many ethnic Haitian children have been denied access to an education. Although Dominican law does not bar undocumented children from the classroom, in practice undocumented children have been routinely prohibited from attending school.¹³⁶ In one batey, Human Rights Watch representatives spoke to a young woman who was illiterate due to these barriers.¹³⁷ Unquestionably, the denial of educational opportunities severely limits such people's possibilities for advancement, relegating them to a future of low skill and low status jobs.

Primary schools tend to be more flexible with regard to documentation requirements than secondary schools, but policies vary from district to district.¹³⁸ Students are often prevented from continuing in school at two crucial junctures. First, they are often barred from registering for the national exam administered at the end of eighth grade, which determines whether a student is eligible for secondary school.¹³⁹ Second, they are typically denied a diploma at the end of secondary school, which is a prerequisite for applying for entry to a university.¹⁴⁰

Yet the Dominican authorities have, over the past year, shown an encouraging willingness to break from past practice. On July 1, 2001, Vice-President and Secretary of Education Milagros Ortiz Bosch announced that schools would no longer require students to show birth certificates. Quoted in the press calling the previous policy racist, Ortiz affirmed that children should not be denied an education because of race or poverty.¹⁴¹

What remains to be seen is how rigorously the secretary of education's announcement will be implemented. At present, with some politicians remaining firmly against opening up the schools to everyone, undocumented children's access to education is still precarious.

Claubian Jean Jacques

The case of Claubian Jean Jacques, a teenage boy whom Human Rights Watch interviewed, illustrates the obstacles that ethnic Haitian children have faced in obtaining an education. Claubian, now age twenty, was born at home in La Lechería, a batey outside of Santo Domingo.¹⁴² His parents, who were both born in Haiti, came to the Dominican Republic in 1979 on a temporary contract to cut cane for the local Catarey sugar mill. Because his parents were undocumented, they did not try to obtain Dominican identity papers for Claubian when he was a baby, believing that it would be impossible.

When Claubian was nine years old, his parents brought him to La Lechería's primary school to enroll him in classes. He was asked for identity papers, but was allowed to enroll even without them.

In 1998, when he was finishing eighth grade, Claubian took the national exam that is administered to all eighth graders in the Dominican Republic. Officials demanded his birth certificate, but he told them that his father was trying to obtain it. The previous year, Claubian's father had gone to the official registry in Villa Altagracia to request identity documents for Claubian. The official in charge of the office told his father that he could not register Claubian without proof of his own legal status. Since Claubian's father did not have Dominican identity papers, he left empty-handed. But with the help of MUDHA, a Santo Domingo-based NGO, the family continued to persevere in its efforts to obtain documentation.

Claubian won a national award for his outstanding school performance, being recognized as the best student in his 1998 graduating class. The award brought substantial media attention to his case and to the overall predicament of undocumented children. After his case made national headlines, the then-minister of education,

¹³⁶ Human Rights Watch interview, Joseph Cherubin, executive director, Movimiento Sociocultural de Trabajadores Haitianos (MOSCTHA), Santo Domingo, June 3, 2001; Human Rights Watch interview, Sonia Pierre, executive director, Movimiento de Mujeres Dominico-Haitianas (MUDHA), Santo Domingo, June 7, 2001.

¹³⁷ Human Rights Watch interview, Neli Monteros, Batey Mata Mamón, Dominican Republic, June 2, 2001. Monteros told Human Rights Watch that she was born in the Dominican Republic, but lacked a birth certificate.

¹³⁸ Human Rights Watch interview, Padre Pedro Ruquoy, June 5, 2001; Human Rights Watch interview, Joseph Cherubin, June 3, 2001.

¹³⁹ Ibid.

¹⁴⁰ Human Rights Watch interview, MUDHA staff, June 7, 2001.

¹⁴¹ Luis Beiro, "No exigirán actas de nacimiento para inscripción en escuelas," *Listín Diario*, July 1, 2001; Susannah A. Nesmith, "Haitian Children Will Be Allowed to Go to Dominican Schools," Associate Press, July 3, 2001.

¹⁴² Human Rights Watch interview, Claubian Jean Jacques, Batey La Lechería, Dominican Republic, June 13, 2001.

Ligia Amada Melo, personally guaranteed that Claubian would not be expelled for lack of a birth certificate.¹⁴³ But without documentation, Claubian has been frequently warned, he will not be able to graduate.

MUDHA has petitioned the central registry office to obtain Claubian's birth certificate. The case has been pending for over two years, however. Now in his second to last year of secondary school, Claubian is afraid that his hard work will have been for nothing. He told Human Rights Watch: "I have many plans if God allows me. I'd like to study medicine."¹⁴⁴ But Dominican universities will not even accept applications from undocumented students. Without documentation and a secondary school diploma, Claubian's future opportunities will be severely limited.

International Standards

Education is recognized internationally as a fundamental right for all children, a right that is codified in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC).¹⁴⁵ These instruments require states to endeavor to make public education available and accessible to all young people.

Moreover, a state that provides education for children cannot do so in a discriminatory manner.¹⁴⁶ It may make distinctions among children, but only to the extent that those distinctions are based on reasonable and objective criteria. Consistent with nondiscrimination rules, the Dominican Republic may not arbitrarily deny an education to particular groups of children. Denying education on the basis of race is, for example, unquestionably arbitrary.¹⁴⁷

Under the Convention against Discrimination in Education, which the Dominican Republic has ratified, restricting non-citizens' access to education is also recognized as unfairly discriminatory.¹⁴⁸ Similarly, the Committee on Economic, Social and Cultural Rights has specified with regard to education that "the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status."¹⁴⁹ Although, as the Claubian Jean Jacques case exemplifies, many of the ethnic Haitian children affected by the Dominican Republic's restrictive policies are in fact Dominican citizens, restrictions on the right of non-citizen children to education are equally unjustifiable.

Besides violating international standards, it is callous and shortsighted to limit the access of non-citizen children to educational opportunities. Such restrictions, which hinder children for the rest of their lives, unreasonably perpetuate existing inequalities.

¹⁴³ "Jacques will not be expelled from school," Dominican Republic One Daily, April 7, 1999.

¹⁴⁴ Human Rights Watch interview, Claubian Jean Jacques, Batey La Lechería, Dominican Republic, June 13, 2001.

¹⁴⁵ See Universal Declaration of Human Rights, art. 26; ICESCR, art. 13(1) ("The States Parties to the present Covenant recognize the right of everyone to education"); CRC, art. 28 (which recognizes "the right of the child to education" as a fundamental human right). The CRC requires states to endeavor, "with a view to achieving [the right to education] progressively and on the basis of equal opportunity," to make free and compulsory primary education available to all. It also calls upon states to make secondary education available and accessible to every child, and to take measures to encourage regular attendance at schools and reduce dropout rates. On the right to education under international law, see generally Manfred Nowak, "The Right to Education," in Asbjorn Eide and others (eds.) *Economic, Social, and Cultural Rights* (1995), pp. 189-211.

¹⁴⁶ See, for example, ICCPR, art. 26.

¹⁴⁷ See Convention against Discrimination in Education, art. 1. See generally Human Rights Watch, *Second Class: Discrimination against Palestinian Arab Children in Israel's Schools* (New York: Human Rights Watch, 2001), pp. 162-64.

¹⁴⁸ See Convention against Discrimination in Education, art. 3. Article 3 provides, in relevant part: "In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake . . . [t]o give foreign nationals resident within their territory the same access to education as that given to their own nationals."

¹⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment 13, The Right to Education (Article 13), U.N. Doc. E/C.12/1999/10 (1999), para. 34.

VII. THE INTERNATIONAL RESPONSE

The Dominican Republic has come under strong and sustained international criticism for its treatment of Haitians and Dominicans of Haitian descent. Several intergovernmental bodies – including the U.N. Human Rights Committee, the Inter-American Commission on Human Rights, and the U.N. Committee on the Rights of the Child – have expressed concern regarding abuses committed against the Haitian population. Their analysis of the situation draws on the continuing efforts of local human rights groups in Haiti and the Dominican Republic.

The Dominican authorities have, over the years, reacted to such criticism with defiance and even overt hostility. President Balaguer, in 1991, warned that international concern over the treatment of Haitians reflected an “ominous campaign” against the country. Not only did he fail to remedy abusive practices, but he undertook even more drastic measures to expel undocumented Haitians.

Although subsequent Dominican presidents have shown somewhat greater openness to international scrutiny, the government’s fall-back position has frequently been an intransigent one. Indeed, President Leonel Fernández’s reaction to a 1999 report of the Inter-American Commission on Human Rights, in which he declared himself “indignant” over the report’s criticisms, seemed almost to mimic Balaguer’s.¹⁵⁰ The mass deportations that were instituted soon after the report’s release were also disturbingly reminiscent of the Balaguer approach.

Rather than taking international criticism seriously – and amending abusive practices accordingly – Dominican authorities have been apt to portray it as biased and unfair. Typical of this tendency is the country’s most recent report to the U.N. Committee on the Elimination of Racial Discrimination, which states:

Any suggestion to [that the country suffers from racial prejudice] is completely wrong and . . . has been manipulated in some international reports. . . . Apart from its absurdity, the very notion would appear to be merely a pretext for the continued existence of some NGOs, both national and foreign.¹⁵¹

Not only have international recommendations been spurned, but local groups have been under heavy pressure to mute their criticisms. Ultra-nationalist politicians, leading religious figures, and commentators have publicly attacked human rights advocates for their defense of the rights of Haitians and Dominico-Haitians.¹⁵² These attacks were particularly virulent during the April 2001 flag-burning scandal.

But recent trends give some grounds for optimism. In September 2001, most notably, the government of Hipólito Mejía reached an agreement with the Inter-American Commission to settle a suit involving two children who had been denied proof of Dominican citizenship. The government’s newly cooperative stance raises hopes that the larger questions underlying the case may also be resolved in a manner consistent with international norms.

Inter-American Human Rights System

The Inter-American Commission on Human Rights first reported on Dominican abuses against Haitians in 1991, after making an on-site visit to the country. In June 1997, the Commission made another on-site visit. Both of the Commission’s reports on the situation of Haitians in the Dominican Republic drew attention to mass expulsions, due process violations, the forced separation of family members, the poor living conditions of the bateyes’, and labor rights violations.

The Commission contacted the Dominican Republic in February 2001 to request information regarding the measures taken to comply with the recommendations of its 1999 report. In response, the Dominican Republic invited the Commission to conduct a follow-up visit, which was still pending as of this writing.¹⁵³

Two cases against the Dominican Republic are currently being litigated in the Inter-American system of human rights protection. The first, case 12.189, addresses undocumented children’s right to Dominican nationality and to public education. The second, case 12.271, challenges the Dominican Republic’s summary deportation

¹⁵⁰ See Juan O. Tamayo, “A Dominican Crackdown on Illegal Immigration Keeps Desperate Haitians out, Expels Thousands Already in,” *Miami Herald*, February 6, 2000.

¹⁵¹ Committee on the Elimination of Racial Discrimination, Consideration of Reports submitted by States Parties under Article 9 of the Convention, Addendum, Dominican Republic, U.N. Doc. CERD/C/331/Add.1 (February 11, 1999), para. 6.

¹⁵² Human Rights Watch interview, Dominican human rights advocates, Santo Domingo, June 7, 2001.

¹⁵³ Inter-American Commission on Human Rights, Annual Report 2000, Chapter 5 (April 16, 2001).

practices, mistreatment of deportees, and the denial of documentation to Dominicans of Haitian descent and Haitian migrant workers.

The first complaint was lodged with the Commission in October 1998 by the International Human Rights Law Clinic at the Boalt Hall School of Law, at the University of California at Berkeley, the Center for Justice and International Law (CEJIL), and the Haitian-Dominican Women's Movement (MUDHA). The petitioners requested that the Commission grant precautionary measures on behalf of two girls, a fifteen-year-old and four-year-old. Both girls were born in the Dominican Republic to a Dominican mother and a Haitian father, and both were denied birth certificates. The older girl was barred from attending school for two years because she did not have proof of Dominican citizenship. In August 1999, the Commission ordered the Dominican Republic to adopt immediate measures to ensure that both girls would not be expelled from the country, and that the older girl could attend school.

The Commission ruled that the case was admissible in February 2001.¹⁵⁴ That September, after a Commission delegation visited Santo Domingo, the Dominican government agreed to resolve the case by providing birth certificates to the two children.¹⁵⁵

On November 12, 1999, an expanded group of NGOs and law school clinics filed a second complaint against the Dominican Republic.¹⁵⁶ The petition asked the Commission to grant precautionary measures to protect the population of Haitians and Dominicans of Haitian descent at risk of expulsion.¹⁵⁷ On November 22, 1999, the Commission issued precautionary measures, ordering the Dominican Republic to end all collective expulsions and to ensure due process in individual expulsions.¹⁵⁸ For several months, the Dominican Republic wavered between ignoring and outright rejection of the Commission's precautionary measures orders.¹⁵⁹ As a result, the Commission decided to request binding provisional measures orders from the Inter-American Court of Human Rights.¹⁶⁰

The Inter-American Court asked the Commission to name individual victims representative of the class of people at risk of expulsion. In June 2000, the Commission named six Dominicans of Haitian descent and one Haitian.¹⁶¹ On August 8, 2000, the Court held a hearing on the case in San José, Costa Rica, taking testimony from Sonia Pierre, executive director of the Movimiento de Mujeres Dominicano-Haitianas (MUDHA), and Father Pedro Ruquoy, executive director of Centro Puente. Both are human rights activists who have worked with the Haitian and Dominico-Haitian communities in the Dominican Republic for decades. In the wake of the hearing, the Court issued two rulings. The first granted provisional measures of protection to five of the seven named

¹⁵⁴ Inter-American Commission on Human Rights, Report No. 28/01, Case 12.189, Dominican Republic (February 22, 2001).

¹⁵⁵ Centro por la Justicia y el Derecho Internacional, Comunicado de Prensa, "Victoria de los derechos humanos de la niñez en la República Dominicana," October 3, 2001.

¹⁵⁶ See International Human Rights Clinic of the University of California at Berkeley, School of Law (Boalt Hall), the Center for Justice and International Law (CEJIL), and National Coalition for Haitian Rights, Request for Precautionary Measures (letter to the Inter-American Commission on Human Rights), November 17, 1999. A few months later, the Human Rights Clinic of the Columbia University School of Law joined the case as co-petitioner. See letter to Bertha Santoscoy, staff attorney, Inter-American Commission on Human Rights, from Laurel E. Fletcher, International Human Rights Clinic of the University of California at Berkeley, and others, March 16, 2000.

¹⁵⁷ *Ibid.*

¹⁵⁸ Inter-American Commission on Human Rights, *Solicitud de Medidas Cautelares: Expulsión de Extranjeros de la República Dominicana* (letter to the Dominican government), November 22, 1999.

¹⁵⁹ See, for example, Dominican Republic, *Situación de Extranjeros de la República Dominicana* (letter to the Inter-American Commission on Human Rights), December 23, 1999.

¹⁶⁰ Inter-American Commission on Human Rights, *Solicitud de Medidas Provisionales a la Corte Interamericana de Derechos Humanos a Favor de Personas Innominadas pero Integrantes de una Categoría Definida: Haitianos y Dominicanos de Origen Haitiano Sujetos a la Jurisdicción de la República Dominicana* (letter to the Inter-American Court of Human Rights), May 30, 2001.

¹⁶¹ Inter-American Commission on Human Rights, *Addendum a la Solicitud de Medidas Provisionales Efectuada a la Corte Interamericana de Derechos Humanos a Favor de Personas Innominadas pero Integrantes de Una Categoría Definida: Haitianos y Dominicanos de Origen Haitiano Sujetos a la Jurisdicción de la República Dominicana* (letter to the Inter-American Court of Human Rights), June 12, 2000 (naming Benito Tide Méndez, Rafaelito Pérez Charles, Antonio Sension, Andrea Alezy, Janty Fils -Aime, Berson Gelim, and William Medina Ferreras).

petitioners and each expert witness, but requested additional information about the remaining two petitioners.¹⁶² The second extended the provisional measures orders to all of the named petitioners.¹⁶³ Although the Court granted protection for each of the individual petitioners, the rulings were still only considered a qualified victory for the Haitian and Dominico-Haitian community in the Dominican Republic because the Court failed to order class-wide relief.

After the Court's August/September 2000 resolutions, the Dominican government reported to the Court several times on its efforts to comply with the provisional measures orders, but did not take the necessary steps to implement the measures.¹⁶⁴ Furthermore, Sonia Pierre and Father Ruquoy, the witnesses who testified before the Court, suffered verbal and physical attacks as a result of their participation in the case.¹⁶⁵ The Dominican Republic's continued refusal to implement the Court's provisional measures orders prompted the Court to issue additional resolutions reaffirming its orders.¹⁶⁶ But most recently, in a welcome step announced in March 2002, the Dominican authorities reached an agreement with the petitioners in the case to establish a joint committee to monitor the government's compliance with the Court's provisional measures orders.¹⁶⁷

While the Commission continues to press the Dominican government to comply fully with the Court's provisional measures orders, the case is also currently pending before the Commission on the merits. With the provisional measures decision shielding Haitians and Dominicans of Haitian descent from the threat of expulsion, a merits decision could require that the Dominican government compensate victims of summary expulsions, and make structural changes in its deportation practices to avoid future violations. Once the Commission has resolved the case on the merits, it may proceed to the Court, which could issue a legally binding order to the government to implement the necessary measures.

United Nations

Nearly all of the United Nations human rights bodies who have examined conditions in the Dominican Republic have drawn attention to abuses against Haitians and Dominico-Haitians.¹⁶⁸ Most recently, the U.N. Human Rights Committee stated that it was "gravely concerned at the continuing reports of mass expulsions of

¹⁶² Inter-American Court of Human Rights, Resolución de la Corte Interamericana de Derechos Humanos de 18 de Agosto de 2000: Medidas Provisionales Solicitadas por la Comisión Interamericana de Derechos Humanos Respecto de la República Dominicana: Caso de Haitianos y Dominicanos de Origen Haitiano en la República Dominicana, August 18, 2000 (granting provisional measures protections to Benito Tide Méndez, Antonio Sension, Andrea Alezy, Janty Fils -Aime, William Medina Ferreras and requesting additional information about Rafaelito Perez Charles and Berson Gelim).

¹⁶³ Inter-American Court of Human Rights, Resolución del Presidente de la Corte Interamericana de Derechos Humanos de 14 de septiembre de 2000: Medidas Provisionales Respecto de la República Dominicana: Caso de Haitianos y Dominicanos de Origen Haitiano en la República Dominicana, September 14, 2000 (extending the provisional measures protections to Rafaelito Pérez Charles and Berson Gelim). The Court extended the provisional measures orders to the remaining two petitioners after receiving additional information about their citizenship status from the Commission. Inter-American Commission on Human Rights, Respuesta de la Comisión a la Solicitud de la Corte Interamericana de Derechos Humanos Expresado en su Resolución de 18 de agosto de 2000 sobre las Medidas Provisionales Solicitadas por la Comisión Interamericana de Derechos Humanos Respecto a la República Dominicana, August 31, 2000.

¹⁶⁴ Dominican Republic, Solicitud Medidas Provisionales: Expulsión de Haitianos y Dominicanos de Origen Haitiano de la República Dominicana (letter to Inter-American Court of Human Rights), November 3, 2000; Dominican Republic, Solicitud Medidas Provisionales: Expulsión de Haitianos y Dominicanos de Origen Haitiano de la República Dominicana (letter to Inter-American Court of Human Rights), January 2, 2001.

¹⁶⁵ Human Rights Watch interview, Sonia Pierre, Santo Domingo, June 7, 2001; Human Rights Watch interview, Padre Pedro Ruquoy, Batey 5, June 5, 2001.

¹⁶⁶ See, for example, Inter-American Court of Human Rights, Resolución de la Corte Interamericana de Derechos Humanos de 12 de Noviembre de 2000: Medidas Provisionales Solicitadas por la Comisión Interamericana de Derechos Humanos Respecto de la República Dominicana: Caso de Haitianos y Dominicanos de Origen Haitiano en la República Dominicana, November 12, 2000.

¹⁶⁷ "Gobierno dominicano acepta que comité internacional supervise migración haitiana," Agence France Presse, March 20, 2002. The committee is to consist of various Dominican government officials and representatives of the petitioners.

¹⁶⁸ The Haitian issue has been on the agenda of the United Nations human rights bodies for nearly a decade. See, for example, U.N. Human Rights Committee, Concluding Observations of the Human Rights Committee: Dominican Republic, U.N. Doc. CCPR/C/79/Add.18 (May 5, 1993).

ethnic Haitians, even when such persons are nationals of the Dominican Republic.”¹⁶⁹ The committee called upon the Dominican authorities to comply with the requirements of the ICCPR – in particular, Articles 7, 12 and 13 – in its treatment of Haitians and Dominicans of Haitian descent.¹⁷⁰

The U.N. Committee on the Elimination of Racial Discrimination, the U.N. Committee on Economic, Social and Cultural Rights, and the U.N. Committee on the Rights of the Child have also expressed concern about discrimination against ethnic Haitians and related issues of nationality, due process, education and labor rights.

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¹⁶⁹ U.N. Human Rights Committee, Concluding Observations of the Human Rights Committee, U.N. Doc. CCPR/CO/71/DOM (April 26, 2001), para. 16.

¹⁷⁰ Article 7 of the ICCPR bars torture and cruel, inhuman or degrading treatment; article 12 protects freedom of movement, and article 13 outlines the due process protections that should be followed in expelling aliens.